DOCUMENT RESUME

ED 468 021 PS 030 609

AUTHOR	March-Joly, Jennifer A.
TITLE	The Adoption and Safe Families Act (ASFA) and the Family Court.
INSTITUTION	Citizens' Committee for Children of New York, NY.
PUB DATE	2002-04-00
NOTE	68p.
AVAILABLE FROM	Citizens' Committee for Children of New York, Inc., 105 East 22nd Street, 7th Floor, New York, NY 10010 ($15). Tel: 212-673-1800; Web site: http://www.vfny.org.
PUB TYPE	Reports - Research (143) -- Tests/Questionnaires (160)
EDRS PRICE	EDRS Price MF01 Plus Postage. PC Not Available from EDRS
DESCRIPTORS	Adopted Children; *Adoption; Adoptive Parents; *Child Welfare; Court Litigation; *Courts; *Federal Legislation; *Foster Care
IDENTIFIERS	*Adoption and Safe Families Act 1997; Family Court; *New York (New York); Permanency Planning (Foster Care)

ABSTRACT

Noting that the Adoption and Safe Families Act (ASFA) requires substantial changes in family court and child welfare casework practice that must be implemented by the states, this report documents the current child welfare situation in New York City and identifies the resources needed by the courts to maintain children's safety and move children quickly into permanent homes. Following introductory remarks, the report provides background information on the federal legislation, the New York State Adoption Safe Families Act (NYS ASFA), the implementation of the Act in New York City, and the delayed disbursement of federal funds to address family court workload challenges. To obtain information for the report, the Citizens' Committee for Children interviewed senior staff from several organizations with appropriate expertise, conducted a literature review, and surveyed family court judges and family court referees. Findings and recommendations are reported with regard to: (1) workload and the family court; (2) barriers to expedited permanency; (3) family court mental health services; (4) the complexity of petitions to terminate parental rights; (5) parents and the ASFA; (6) 18-B panel attorneys, law guardians, and ASFA; (7) testimony used during family court hearings; (8) Administration for Children's Services (ACS) attorneys and ASFA; and (9) ACS caseworkers and ASFA. The report's five appendices include a glossary of relevant terms, guidelines for outcome measures, guidelines for permanency reviews, and data collection instruments. (Contains 49 references.) (KB)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 468 021

The Adoption and Safe Families Act (ASFA) and The Family Court

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE, AND IN ELECTRONIC MEDIA FOR ERIC COLLECTION SUBSCRIBERS ONLY, HAS BEEN GRANTED BY

Rose Audco

2A TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

CITIZENS' COMMITTEE for CHILDREN
OF NEW YORK INC.

BEST COPY AVAILABLE

PS 030609

The Adoption and Safe Families Act (ASFA) and The Family Court

CCC
CITIZENS' COMMITTEE for CHILDREN
OF NEW YORK INC.

Acknowledgments

We are very grateful to the Family Court judges and referees who agreed to be interviewed as part of Citizens' Committee for Children of New York (CCC's) project. We appreciate their candor in describing the impact of the Adoption and Safe Families Act (ASFA) on the operations of the Family Court and sharing recommendations to further enhance the Family Court reform efforts already underway. We would also like to thank Administrative Judge Joseph Lauria who offers us frequent updates on the new initiatives in the Family Courts and provides his vision for addressing challenges brought on by ASFA. Each of the Supervising Judges – Honorable Mary Ellen Fitzmaurice, Honorable Paul Grosvenor, Honorable Clark Richardson and Honorable Richard Ross provided CCC with a forum for introducing our project and discussing with the judges and referees the work of CCC. We offer our sincerest thank you to the Honorable Judge Sara Schechter who presides over the Model Court in Manhattan and Barbara DeMayo, Coordinator of Special Projects for New York City Family Court and Virginia Gippetti, Principle Management Analyst for New York City Family Court, for describing the work of the Model Court and the progress made to date. Rachel Hahn-Turnbull, Court Attorney to the Honorable Joseph Lauria, and Azra Farrell, Deputy Director of the Permanent Judicial Commission on Justice for Children, provided CCC with valuable information about the operation of the Family Courts.

We are grateful to Michele Cortese, Director of Training at the Juvenile Rights Division of the Legal Aid Society, for spending countless hours explaining various provisions under the Family Court Act and how ASFA alters case processing in the Family Court. Michele also provided an in-depth training to our volunteers on the components of ASFA, as well as reviewed draft materials. We also express our appreciation for the insight and expertise shared by Joe Cardieri, Deputy Commissioner/ General Counsel for Legal Services at the Administration for Children's Services (ACS), and his Special Assistant, Stephanie Gendell. Lisa Parrish, Deputy Commissioner for Preventive and Foster Care Services at ACS and her Special Counsel, Alexandra Lowe were very generous with their time and patience explaining the work between ACS and the Family Courts. We would also like to thank Jan Fink, Deputy Counsel for the Office of Court Administration, for her assistance.

We would also like to thank the volunteers from Citizens' Committee for Children who took countless hours from their busy schedules to help CCC learn about ASFA and its impact on the operations of the Family Court. Our work would not have been possible without their participation. In addition, we would like to thank Dr. Trudy Festinger for training CCC on how to develop surveys and for reviewing CCC's questionnaires for accuracy of content and tone. Our thanks as well to Anita Gundanna, student intern, who provided background research for this project. Finally, we would like to extend a heartfelt thank you to Gabrielle Kreisler, Esq., the Assistant Commissioner for External Affairs, at the Administration for Children's Services. This report reflects hours of hard work when Gabby was the Director of Program and Policy at Citizens' Committee for Children.

Gail B. Nayowith
Executive Director

Jennifer A. March-Joly
Associate Executive Director
for Program and Policy

Nancy Solomon
Chairman

Nancy Locker
President

Judith A. Garson
Co-Chair

Chris Stern Hyman
Co-Chair

Table of Contents

INTRODUCTION 4

BACKGROUND 5

Federal Adoption Safe Families Act Legislation 5

"Reasonable Efforts"
Permanency Hearings
Requirements to File the Petition to Terminate Parental Rights (TPR Petition)
Promoting Safe and Stable Families
Criminal Background Checks
Federal Evaluation to Measure Compliance

New York State Adoption Safe Families Act Legislation (NYS ASFA) 8

Implementation of ASFA in New York State
ASFA Guidelines in New York State
Criminal Background checks under NYS ASFA
Changes to the Family Court Act resulting from ASFA

New York City: Implementation of NYS ASFA 10

NYC Family Court System: Where ASFA is Implemented
Model Court Project: Incremental Court Reform and the Implementation of ASFA
Family Court Mental Health Services: A missing link in efforts to expedite permanency
Challenges

Delayed Disbursement of Federal Funds to Address Family Court Workload Challenges 15

METHODOLOGY 16

FINDINGS AND RECOMMENDATIONS 18

Workload and the Family Court 18

Barriers to Expedited Permanency 19

Family Court Mental Health Services 21

The Complexity of Petitions to Terminate Parental Rights 22

Parents and ASFA 23

18-B Panel Attorneys, Law Guardians and ASFA 24

Testimony Used During Family Court Hearings 25

ACS Attorneys and ASFA 26

ACS Caseworkers and ASFA 27

CONCLUSION 28

APPENDICES 29

A. Glossary 29

B. HHS Final Foster Care Analysis and Reporting System Guidelines 31

C. ACS ASFA Guidelines 37

D. Judge Survey 49

E. Referee Survey 57

Introduction

Since September 1997, the number of children in foster care in the United States has increased by 52%, from 382,002 to 581,000 children, and as of September 1999, the average length of stay was two years and eight months nationally.[1] In New York City, the number of children in foster care has decreased by 28% since 1997[2], although the average length of stay for children in foster care is over four years.[3] The most recent annual figures report that 30,858 children were in foster care in New York City in fiscal 2001 (July 1, 2000 – June 30, 2001).[4] For too many children, foster care has become a long-term experience, causing unnecessary trauma, family dissolution and difficulty when the majority (59%) of children in care are eventually reunited with their families.[5]

Over the past five years, New York City's child welfare system has undergone significant changes intended to keep children safe and strengthen families. Local government engineered some of these changes and others were delivered by President Clinton and Congress. On the local level, the Mayor created a separate city agency for child welfare services, called the New York City Administration for Children's Services (ACS), which has benefited from unprecedented accountability, attention and resources from City Hall. In 1999, Commissioner Scoppetta announced the city's plan to provide neighborhood-based child welfare services to children and families in the communities where they live. Through this initiative, ACS intends to shorten the length of stay for children in foster care and develop a network of support services for families to ease the transition home and support children and families when they are no longer connected to the city's child welfare system.

In November of 1997, during this evolution in New York City's child welfare system, President Clinton signed the Adoption and Safe Families Act (ASFA) (P.L. 105-89) into law marking a major transformation in how states process cases of child abuse and neglect in Family Courts across the country. In writing ASFA Congress attempted to shorten the length of time that children could stay in foster care, increased the frequency with which Family Courts review a child and family's progress towards achieving permanency, and demanded that states ensure the safety of each child until permanency is achieved. After hearing extensive testimonies from children who had endured years of interminable upheaval, Congress reacted by enacting legislation designed to expedite permanency for children in foster care by shortening their length of stay in care and reunifying them with their families or finalizing their adoption. Under ASFA, in order to be eligible for federal IV-E foster care funds, states are required to enact enabling legislation. New York State's ASFA (NYS ASFA) legislation was passed into law February 11, 1999.

Recognizing the major impact of ASFA on the operations of the Family Court, Citizens' Committee for Children of New York (CCC) undertook this project to document the situation and identify resources needed by the courts to maintain children's safety and move children quickly into permanent homes. ASFA requires major changes in Family Court and child welfare casework practice that must be implemented by the states. The New York City Family Courts, along with ACS, the Legal Aid Society and the 18-B Panel Attorneys have taken significant and meaningful steps towards expediting permanency for children in foster care. Increased training, new protocols and guidelines enhance the shared commitment of judges, attorneys, and caseworkers to ensuring child safety and achieving expeditious decisions about permanency. Yet, as important as these tools are, they cannot compensate for the sheer lack of financial resources available to the Family Court. Without funds to hire additional judges, attorneys, referees, case coordinators and other court personnel, and without adequate physical space and the availability of support services in the community, few children will be able to quickly find a permanent home and avoid long stays in the foster care system. The successful implementation of ASFA in New York City depends upon the Family Court's ability to process thousands of additional petitions, the quality of legal representation for parents and children in these proceedings, and the ability of ACS and voluntary agency caseworkers to obtain support services for children and families in the community. The failure to successfully carry out components of ASFA will result in a loss of federal foster care dollars, which represent approximately half of the source of funds used by the states and localities to pay for the room, board, and administrative costs of children in foster care.

1 AFCARS Report, United States Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, Interim FY'99 Estimates as of June 2001: www.acf.dhhs.gov/programs/cb

2 Five Years of Reform in Children's Services, 1996-9001 Reform Update. New York City Administration for Children's Services.

3 Fiscal Year 2000 Mayor's Management Report.

4 Fiscal Year 2001 Mayor's Management Report

5 Ibid.

Federal Adoption Safe Families Act (ASFA) Legislation

Safety and permanency for children are two of the major goals of ASFA. Specifically, the President and Congress expect the courts and caseworkers to consider a child's health and safety at each judicial determination and throughout the implementation of each child's permanency plan. To ensure that states promote each child's safety until permanency is achieved, ASFA enhances the "reasonable efforts" requirements, outlines circumstances when "reasonable efforts" are not required, and mandates criminal background checks for foster and adoptive parent.

To expedite permanency for children in foster care, ASFA shortens the timeframe for the courts to review a child's permanency goal and plan from 18 months to 12 months after a child has been placed in foster care. In addition, ASFA requires judges to conduct a closer review of each child's permanency goal and plan at each permanency hearing. Under ASFA, permanency is achieved if a child is reunified with his/her family, adopted, placed with a fit and willing relative or a legal guardian, or placed in another planned permanent living arrangement.

The major components of ASFA are explained below:

"Reasonable Efforts"

Prior to ASFA, states were required to make "reasonable efforts"[6] to prevent the removal of a child from his/her home, and to reunite children with their families. Under ASFA, states are required also to make "reasonable efforts" to achieve the goals outlined in the permanency plan, which could include reunification, adoption, or another permanent living arrangement. ASFA also defines circumstances when "reasonable efforts" are not required to prevent placement in foster care or to reunify a child with his/her family due to their parents' inability to care for them. Specifically, ASFA states that "reasonable efforts" to prevent a removal or reunite a family are not required when:

(1) an infant has been abandoned, as defined by state law;
(2) a parent committed murder or voluntary manslaughter;
(3) a parent aided or abetted, attempted, conspired or solicited to commit such a murder or such a voluntary manslaughter;
(4) a parent committed a felony assault that resulted in serious bodily injury to a child or to the child of another parent; or
(5) a parent already had his/her parental rights terminated involuntarily for another child.[7]

If a family falls into one of these categories and a judge determines that "reasonable efforts" are not required, the judge must hold a permanency hearing within 30 days of this determination.[8]

By defining these circumstances, ASFA does not forbid states from providing "reasonable efforts" to families who fall into one of these categories, but gives states the authority to bypass reunification efforts with families that seemed incapable of safely caring for a child. In the final federal rule effective March 2000, states have broad flexibility to define other circumstances when "reasonable efforts" are not required to prevent the removal or reunify a family.[9] If no "reasonable efforts" are required, states are permitted to proceed directly to a hearing to terminate a parent's rights after the fact-finding has been completed.

Permanency Hearings

Under ASFA, Family Courts are held to strict timelines for achieving permanency for children in foster care. Specifically, ASFA requires Family Courts to hold an initial permanency hearing 12 months after a child enters foster care.[10] Under the statute, a child enters foster care either 60 days after a child is removed from his/her home, or the date when a court makes a finding of abuse or neglect against a parent, whichever is sooner. Ideally, this permanency hearing should be preceded by a completed

6 The reasonable efforts requirement has been a key component of permanency planning for quite some time. It was designed to prevent the unnecessary removal of children from their families and when children are removed from their families for safety reasons that efforts are made to secure a permanent home for the child either via reunification or adoption. www.casanet.org/library/reasonable-efforts. According to final federal rules on ASFA, reasonable efforts shall be made to (1) maintain the family unit and prevent unnecessary removal of a child from the child's home, as long as the child's safety is assured; (2) effect the safe reunification of the child and family; (3) make and finalize alternative permanency plans in a timely manner when reunification is not appropriate or possible. The child's health and safety are of paramount concern in making reasonable effort findings. As noted in the text, ASFA defined circumstances when such efforts are not required to prevent foster care placement or to reunify a child with his/her family. The overriding emphasis of the legislation places child safety over family reunification.

7 ASFA Title I, section 101.
8 Ibid.
9 Child Welfare Final Rule, US Department of Health and Human Services; www.acf.dhhs.gov/programs/cb/policy/execsumm.htm
10 ASFA, Title III, section 302.

BEST COPY AVAILABLE

fact-finding and dispositional hearing[11] that determines a parent's culpability and sets a permanency plan. Prior to ASFA, states were required to review each family's progress 12 months after a child had been placed in foster care and every twelve months thereafter. This review was called an extension of placement hearing and did not have an emphasis on expediting permanent placement for children. ASFA requires that states be diligent about reviewing a family's status by holding an initial hearing 12 months after a child enters foster care and subsequent permanency hearings every twelve months thereafter.

Requirement to File the Petition to Terminate Parental Rights (TPR Petition)

One of the most controversial provisions under ASFA is the requirement that states file a termination of parental rights (TPR) petition[12] if a child has been in foster care for 15 of the last 22 months.[13] This provision was designed to maintain foster care as a temporary living situation, although it is interpreted by many as a fast track to adoption for many children in foster care. Critics have been quick to interpret ASFA as requiring the actual termination of parents' rights at the 15-month mark, without recognizing that ASFA mandates only the filing of the petition after a child has been in foster care for 15 of the last 22 months. Furthermore, ASFA does not amend the standard that states use for terminating a parent's rights TPR, nor does ASFA make it easier for judges to make a finding of termination during this hearing. ASFA does not specify any timeframe for the completion of the hearing to determine whether a parent's rights should be terminated. ASFA merely dictates when the termination petition is to be filed.

Recognizing that varying circumstances dictate each family's ability to reunify with their children, ASFA outlines three exceptions to the 15-month filing rule for a TPR petition. Under ASFA states are permitted to delay this filing if one of the following three criteria is met:

(1) the child is residing in kinship foster care; or
(2) the state agency can demonstrate a compelling reason why filing this petition would not be in the best interests of the child; or
(3) the state has failed to provide services to a family that were designated in the state's case plan.[14]

Interestingly, ASFA provides authority to state child welfare systems to decide whether a family meets any of these exceptions, and did not include a review or hearing by the Family Court to decide whether a family's circumstance warrants a termination hearing at the 15-month mark. This section of ASFA gives great discretion to each state's child welfare system. The Family Court only reviews whether "reasonable efforts" were made to review each child's permanency goal and plan, and whether sufficient grounds exist to terminate a parent's rights.

Promoting Safe and Stable Families

ASFA recognizes the importance of family support services to prevent children from entering foster care and to facilitate the reunification of children in out of home care with their families by reauthorizing the Family Preservation and Family Support Act.[15] Under this legislation, called the Promoting Safe and Stable Families Act, a national allocation of $305 million was allocated in federal fiscal 2001 to offer programs to assist families whose children are at risk of foster care placement.

Criminal Background Checks

ASFA requires every state to perform criminal background checks of all foster and adoptive parents.[16] Nineteen of fifty states already had legislation mandating both of these background checks prior to AFSA; however, under New York law the state's child welfare system was only required to conduct criminal background checks of prospective adoptive parents. New York State law also required foster parents to sign an affidavit disclosing any criminal history. Since the passage of ASFA, the Governor and New York State Legislature allocated funds to process the criminal background checks, relieving local counties and voluntary child welfare providers of carrying this cost.

11 The Court holds a 'fact-finding hearing" to determine whether the allegations of neglect or abuse can be supported by clear and convincing proof. A "dispositional hearing" is held to determine what should be done if the court finds the child has been neglected or abused. The plan developed must be in accordance with the best interest of the child.

12 A TPR petition may be filed by an authorized child protective agency or by foster parents, asking the court to permanently terminate a parent's right to a child. "Introductory Guide to the New York City Family Court." Association of the Bar of the City of New York. Committee on Children and the Law. August 1996.

13 ASFA, Title I, section 103.

14 ASFA, Title I, section 103.

15 ASFA, Title III, section 305.

16 ASFA, Title I, section 106.

ASFA defines the types of criminal histories that bar individuals from providing a foster or adoptive home for children. Specifically, ASFA states that a person is barred from becoming a foster or adoptive parent if the person had a felony conviction for child abuse or neglect, spousal abuse, a crime against a child, or a crime involving violence, including rape, sexual assault and homicide. In addition, parents are unfit to serve as a foster or adoptive parent if convicted of a felony within the past five years, for physical assault, battery or a drug related offense.[17] In the final federal rules effective March 2000, states were given authority to disregard these criteria in its ASFA enabling legislation and create new standards for approving applications of foster and adoptive parents who have a criminal history. If a state elects not to conduct criminal background checks, the state must, at a minimum, document how the safety of each child will be maintained.

Federal Evaluation to Measure ASFA Compliance

Under ASFA, Congress outlines broad goals to be achieved, including the safety of children and expedited permanency for children in foster care. To ensure that ASFA can achieve these intended outcomes, Congress requires the submission of an annual report by DHHS, beginning in May 1999, using data from the Adoption and Foster Care Analysis and Reporting System as a baseline. DHHS was responsible for developing outcome measures to assess states' performance and a system for rating each state's performance. Effective August 1999, after much consultation and input from state and local child welfare administrators, advocates, academics and other child welfare professionals, DHHS developed its set of indicators and outcome measures designed to evaluate each state's performance (Appendix B).[18]

Effective March 2000, the federal government established a new review process that focuses on child safety, permanence, and child and family well-being, called the Child and Family Services Reviews. DHHS will collect qualitative data by conducting in-depth case record reviews of a randomly selected group of children in foster care and quantitative data by requiring each state to complete a state data profile. These reviews are scheduled every five years, with a trained team of federal and state reviewers who interview family members, caseworkers, caretakers and service providers to supplement information from case records. After assessing the Child and Family Services Reviews and a state's data profile, DHHS will evaluate whether a state is in compliance with federal child welfare outcomes. If the review demonstrates that the state is performing below federal standards, that state is responsible for drafting and submitting a corrective action plan to DHHS. As long as a state is implementing its improvement plan and meets the timeframes for improvement outlined in its plan, the federal government will refrain from assessing fiscal penalties. However, if a state cannot meet its own timeframes and fails to improve its child welfare outcomes, federal foster care funds will be withheld.

Under the DHHS Child and Family Services Review schedule, New York was included among the first set of compliance reviews. The review of state compliance included two phases. The first phase, was the development of an assessment by the state Office of Children and Families (OCFS) of child protective services, foster care, adoption, family preservation and family support, and independent living programs. This statewide assessment was submitted to DHHS in April of 2001. The second phase, entailed case record reviews addressing specific outcomes and was conducted in June of 2001. Having completed both phases, DHHS issued a final report on New York State compliance in January of 2002. The report addresses the strengths and needs of the state's child welfare system for each of the safety, permanency, and child and family well being outcomes and each of the systemic factors reviewed. New York State was found in substantial conformity in two of seven outcome areas and in four of the seven systemic factors that comprise the Child and Family Services Review and was found out of compliance or "not in substantial conformity" in five outcome areas and three of the systemic factors. It is estimated that New York State is at risk of losing approximately $2,284,407; the federal fiscal year 2001 penalty for this level of non compliance. A summary of federal review findings is provided in the table on the following page.

17 Ibid.
18 ASFA, Title II, section 203.

Substantial Conformity Achieved

Safety Outcomes #2 Children are safely maintained in their homes whenever possible and appropriate.
Well Being Outcomes #2 Children receive appropriate services to meet their educational needs.

Systemic Factor #3 Quality Assurance System.
Systemic Factor #4 Training.
Systemic Factor #6 Agency Responsiveness to the Community.
Systemic Factor #7 Foster Care and Adoptive Parent Licensing, Recruitment and retention).

Substantial Conformity Not Achieved

Safety Outcomes #1 Children are first and foremost, protected from abuse and neglect.
Permanency Outcomes #1 Children have permanency and stability in their living situations.
Permanency Outcome #2 The continuity of family relationships and connections is preserved for children.

Well Being Outcomes #1 Families have enhanced capacity to provide for heir children's needs.
Well Being Outcome #3 Children receive adequate services to meet their physical and mental health needs.

Systemic factor #1 Statewide Information System.
Systemic factor #2 Case Review System.
Systemic factor #5 Service Array.

New York State must use the information in the final report to develop a Program Improvement Plan (PIP) for any area that DHHS has determined not to be in substantial conformity with federally determined outcome and systemic standards. The state began its PIP process in December of 2001 by gathering stakeholders in the child welfare system to work in teams to identify factors contributing to performance needing improvement and possible improvement strategies. State OCFS is required to submit its Program Improvement Plan (PIP) to DHHS's regional office by April 2002. If it is determined that the state has successfully completed the PIP, DHHS will rescind the withholding of federal funds associated with those areas.

New York State Adoption Safe Families Act Legislation (NYS ASFA)

Implementation of the Adoption Safe Families Act in New York State

To be eligible for federal IV-E foster care funds, which pay approximately half of New York's room and board costs for children in foster care, the Governor and the New York State Legislature had to pass enabling ASFA legislation. States were offered the option to enact the same legislation or to expand particular provisions of federal ASFA. These included defining in the law broader circumstances in which states can dispense with "reasonable efforts" to reunify a family and defining compelling reasons when filing a TPR petition is not in a child's best interests. After much debate in the Legislature, New York finally settled on enabling legislation that conformed almost exactly to the provisions of federal ASFA, without taking the opportunity to more clearly define compelling reasons when filing a TPR is not in a child's best interest. NYS ASFA was passed on February 11, 1999, 42 days after the federal deadline. The state's delayed enactment of ASFA placed New York at risk of losing federal IV-E funding. To date, the federal Department of Health and Human Services (HHS) has not enforced any fiscal penalties under ASFA.

ASFA guidelines in New York State

The New York State Office of Children and Families (OCFS) chose not to codify in regulation "compelling reasons." Instead, OCFS drafted a set of guidelines for county social service districts that attempt to provide some clarity to the "compelling reasons" not to file a TPR petition category.[19] These include, if:

the child is 14 years or older and does not want to be adopted;

(1) a family setting will not currently meet the child's needs because of the child's severe emotional, behavioral or psychiatric problems;

(2) at least one parent is actively being considered as a discharge resource for the child, and it is anticipated that such discharge is likely to occur within six months;

(3) the child is in placement with a sibling(s) and the sibling(s) is not being freed for adoption;

(4) the parent makes regular contact with the child and maintaining their relationship benefits the child; or

(5) the child is in care for a child-related problem, at least in part, and there would be little or no benefit to the child in ending the child's relationship with the child's parent(s).[20]

In defining these circumstances, OCFS tried to prevent permanently severing the parent and child relationship in unwarranted situations. ACS adopted these guidelines with some modification (Appendix C), and distributed these materials to each of the 45 child welfare agencies with which it contracts to provide foster care services in the City.

Criminal Background Checks under NYS ASFA

To ensure the safety of children who require out of home care, the Governor and Legislature maintained the provisions in ASFA that bar a parent from becoming a foster or adoptive parent if the parent has been convicted of certain felonies. Specifically, under state law, NYS ASFA excludes prospective foster and adoptive parents if the parent has a felony conviction for child abuse or neglect, spousal abuse, a crime against a child, or a crime involving violence, including rape, sexual assault and homicide. In addition, an application to serve as a foster or adoptive parent is denied by the state if a parent was convicted of a felony within the past five years, for physical assault, battery or a drug related offense.[21] The Governor and New York State Legislature, however, went even further to protect children by requiring criminal background checks of every person over the age of 18 living in the prospective foster or adoptive home. Furthermore, the Governor and Legislature agreed that if a prospective foster or adoptive parent or anyone in the household over age 18 has any other criminal history, the state would be responsible for making a determination on a case-by-case basis whether the home would be safe for children.

Because New York State had never conducted criminal background checks of prospective foster parents prior to the enactment of ASFA, thousands of foster families were subjected to criminal background checks when their annual re-certification date arrived. Once initial background checks were performed, it was revealed that foster parents who had foster children living in their homes had in some cases been convicted of a violent felony.

Under NYS ASFA, there is a presumption that children must be removed from those homes immediately, regardless of the circumstances leading up to the felony conviction or the status of the children in the home. Several judges, including State Supreme Court and Family Court judges, found this presumption to be a violation of foster parents' due process rights and held a hearing to determine whether the foster children were at risk living in the home of a person who had been convicted of certain violent felonies. The Governor and Legislature agreed with the judges' interpretation of the due process clause of the 14th amendment and modified NYS ASFA legislation to include a rebuttable presumption that prospective foster parents who have been convicted of certain felony convictions. In practice, Family Court judges now hold a hearing to determine whether a child's safety is endangered if he/she continues to live with a foster parent with a criminal history.

19 ASFA leaves it to states to determine which state plan requirements must be incorporated into state statute. National Conference of State Legislators. "State Legislators Report." Vol. 24, no. 5 March 1999.

20 OCFS Informational Letter, 98 OCFS INF-3, Office of Strategic Planning and Policy Development, November 17, 1998.

21 NY Soc Serv Law § 378 - a, 1999. NY Laws Ch. 7.

Changes to the Family Court Act resulting from ASFA

Prior to ASFA the New York Family Court Act did not specify timeframes within which the fact-finding or dispositional hearing must be completed on an original child protective petition. However, the Family Court Act did require the Family Courts to initially review a child and family's status 12 months after a child had been placed in foster care. In New York City, ACS was responsible for filing the petition for the extension of placement hearings. Failure to do so would end the City's custody of a child because his/her placement would have lapsed at the 18-month period. Family Courts were required to hold subsequent extension of placement hearings every twelve months.

Since the passage of NYS ASFA the timeframes within which the fact-finding or dispositional hearing must be completed on an original child protective petition remain unspecified under New York Family Court Act. However, after NYS ASFA all extension of placement hearings are now termed permanency hearings with the initial permanency hearing to be held twelve months after a child had been placed in foster care. It is important to note that NYS ASFA does not give the Family Courts broader discretion during the permanency hearings, nor does NYS ASFA change the kind of information to be reviewed. NYS ASFA merely calls on the Family Courts to scrutinize, more closely, the permanency goal for each child and whether the family is able to comply with the permanency plan.

NYS ASFA did not change the provisions in the New York Family Court Act that outline grounds to terminate a parent's rights. ASFA mandates only the filing of the petition after a child has been in foster care for 15 of the last 22 months, and does not specify any timeframe for the completion of the hearing to determine whether a parent's rights should be terminated. Under NYS ASFA, before a parent's rights can be terminated, a judge must find that the state agency made "reasonable efforts" to achieve the permanency plan, which includes referring families to necessary support services and ensuring that they have access to these services.

New York City: Implementation of ASFA

New York City's Family Court System: Where ASFA is implemented.

There are five Family Courts (Family Court) in New York City, each situated in one of the five boroughs, with jurisdiction over cases of child abuse and neglect, domestic violence, juvenile delinquency, Persons In Need of Supervision (PINS), guardianship, custody, and visitation, among other family-related cases. After years of assigning judges to General Parts (courtrooms), the Family Court began to direct judges to preside over particular types of cases in an effort to streamline the court's operations and assist judges in managing their caseloads. These Specialized Parts include: Child Protective/Permanency Planning[22]; Juvenile Delinquency and PINS[23]; and Domestic Violence, Custody and Visitation.[24] In 2000, 50,557 child protective petitions[25] alleging child abuse or neglect were filed in Family Court and our interviews suggest that judges carry day-to-day caseloads that hover in the 30-60 range.

As of January 2002, there are 47 judges sitting in the Family Court and each has a court attorney. There are 27 referees[26] who are assigned to preside over any or all of the following uncontested hearings: permanency hearings, extension of placement, custody and visitation issues, and termination hearings. The Family Court also includes the Family Treatment Court, the Model Court and "Best Practice"courts (see discussion below).[27] Located in New York City Family Court, these courts use alternative means to more quickly resolve child protective cases and achieve

22 The Child Protection/Permanency Part addresses cases involving child neglect, child abuse, termination of parental rights, and reviews of children in foster care as well as children freed for adoption.

23 The Juvenile Delinquency/PINs Part addresses cases involving juvenile justice and at-risk youth (i.e, juvenile delinquency, PINS proceedings).

24 The Domestic Violence, Custody, Visitation Part addresses cases involving child support, paternity, interstate support, and orders of protection.

25 New York City Family Court filings.

26 A referee is an attorney who may hear and decide a case and issue orders. "The Courts of New York: A Guide to Court Proceedings with a Glossary of Legal Terms." New York State Bar Association.

27 For a full description of the Drug Treatment Part, see www.courtinnovation.org/demo_05mftc.html

permanency for children. The Family Court is also moving towards a system that assigns one judge to each child protective case, from the initial filing of the original child protective petition until a child finds a permanent home. Although this system is not yet in practice, it is a key component of court reform efforts and of expediting permanency for children in foster care. As a result of such reforms judges already familiar with the circumstances of each case would not have to endure a lengthy review of the case history before presiding over a permanency hearing. It is believed that continuity of information and continuity of participants will help judges expedite permanency for children in foster care.

Upon the implementation of NYS ASFA, the New York State Office of Court Administration (OCA) conducted a series of training sessions for the Family Court judges, court attorneys and clerical staff, which are repeated annually. Among other topics, the training includes descriptions of the components of ASFA and the changes that resulted in the Family Court Act. Other training on ASFA and child development has been provided by the National Council of Juvenile and Family Court judges and Permanent Judicial Commission on Children, which also conducted a listening tour along with Administrative Judge Lauria, of the Family Court in May 2000. In October 2000 a half-day training session was provided and included judges from other jurisdictions, child development specialists, administrators and administrative agency staff. To facilitate the filing of petitions and orders, OCA also reviewed its court forms and made significant updates to reflect the new requirements under ASFA. These forms can be found in their entirety on the OCA website (www.courts.state.ny.us).

To promote collaboration among all of the professionals working in the Family Court and to build a shared sense of ownership in identifying problems and creating solutions to improve the operations of the Family Court, in December 2000, the Administrative Judge of the Family Court began holding regular stakeholders meetings in each of the five boroughs. With approximately 100 people in attendance at each meeting, including judges, ACS attorneys, Legal Aid attorneys, parent representatives, court attorneys and other court personnel, the Administrative Judge has instituted a mechanism for collecting feedback from the Family Court on a consistent basis to keep abreast of what is happening in Family Court and monitor court reform efforts. In addition, the Administrative Judge, the Attorney-in-Charge of the Juvenile Rights Division of The Legal Aid Society, the Deputy Commissioner for Legal Services at ACS, the NYC Corporation Counsel for Family Court, and 18-B Panel Attorneys[28] meet every six to eight weeks to review the status of Family Court operations and collaborate on initiatives to improve the handling of cases in the Family Courts.

The Family Court has gradually been able to access additional resources to hire additional court personnel, including referees, to more thoroughly review and more quickly process each child protective case before the court. The Office of Court Administration (OCA) began using referees in the Family Court in 1996 to handle custody and visitation cases. However, by 1999 when ASFA became law in New York, OCA recognized that the Family Courts needed more resources and dedicated referees to the newly created Compliance Parts[29] to handle the influx of permanency hearings; in doing so, the use of referees can help to address caseload volume and overtaxed court calendars.

Model Court Project: Incremental Court Reform & the Implementation of ASFA

As part of the federal Court Improvement Project, the New York County Family Court received funds to institute a Model Court in January 1999. The Model Court judge presides over all types of child protective hearings, including original abuse or neglect petitions, permanency hearings (extension of placement), and termination of parental rights. The judge is responsible for processing cases from fact-finding to completion of the initial permanency hearing within 12 months after a child has been placed in foster care through to reunification or adoption. To accomplish this work, the judge initially had the assistance of a court attorney, referee and a social worker that were responsible for involving parents and relatives early on, conferencing each case before the parties appear before the judge and tracking the case from the day the petition is filed up until court involvement is no longer necessary. The Model Court also initially employed a case manager responsible for completing all required data

28 In 1965 the Legislature enacted County Law Article 18-B requiring each county to provide and compensate assigned counsel for indigent defendants. An 18-B attorney can also be appointed to represent adults in Family Court under section 262 of the Family Court Act. The cost of counsel is borne by the counties. NYS Bar Journal. "Court-Appointed Attorneys Face Legal and Financial Challenges," Vol. 73, No.4. May 2001.

29 To handle the overwhelming number of permanency hearings required under ASFA, especially hearings for those 38,000 children who were already in foster care when ASFA became law in New York State, the Family Court established "Compliance Parts" in each Family Court in 1999. Referees are assigned to the Compliance Parts to conduct permanency hearings.

entry. Staffing of the Model Court has evolved overtime. The present staffing structure includes a court attorney, a referee and a case coordinator. The case coordinator performs the work previously performed by the social worker and case manager.

The Model Court staffing structure is intended to facilitate the achievement of faster permanency for children in the child welfare system. Specifically, to ensure that fact-finding of child protective cases occurs within 60 days of the filing[30] of an abuse/neglect petition and that the court moves to disposition within 90 days of the filing, the Model Court implemented a case conferencing process that parallels the court process. Each court appearance is preceded by a conference that brings together parents, family members, direct and voluntary caseworkers, legal guardians, attorneys representing parents, and the court employee that functions as the conference facilitator. Case conferencing provides an opportunity for parties to come together and reach agreement prior to appearing before the judge. As it encourages the establishment of preliminary service plans and the negotiation of settlements prior to court appearance, it reduces the number of hearings cases require and therefore the time each case spends before the judge. The Model Court also employs "back-end" tracking to ensure that problems or set backs that may arise when carrying out service plans do not derail the permanency planning process. Back-end tracking helps to ensure that parents have access to needed services, that they have an ongoing opportunity to speak up, and remain informed of the status of their case.[31]

An initial status report of the Model Court Project demonstrated that, when staffed with adequate resources, Family Court has incredible potential to expedite permanency for children who require out of home care. Among other findings, the report showed that in its first year of operation, the presiding judge needed an average of 88 days (less than 3 months) to process child neglect petitions from filing to completion of the disposition, and an average of 99 days (just over three months) to process child abuse petitions from filing to the completion of the disposition.[32] This expedited process far surpasses the typical timeframe for processing cases. For example, in 1999, it took the Family Court over three months just to complete the fact-finding for 64 percent of the petitions filed. It took Family Court another three months or more to complete the dispositional hearing for 32 percent of child protective petitions filed. [33]

By completing the fact finding and dispositional phases of the case within the first three months that a child is placed in foster care and providing intensive case oversight and case conferencing of the parties, the Model Court can conduct an in-depth review of the child's permanency goal and permanency plan for the family within 12 months after a child's placement in foster care.

The Family Court intended to replicate the structure and case processing of the Model Court by assigning to each judge sitting in a Child Protective/Permanency Planning Part a referee and a case coordinator by the Spring of 2002. This proposal has been pared down due to current funding constraints. In February 2002 two "Best Practice" courts came on-line in the Bronx and Brooklyn and a third "Best Practice" court is expected to come on line in Queens in late Spring of 2002. Contrary to the initial intent, "Best Practice" court staffing structures will benefit from a referee but will not have a case coordinator. Additionally, the roll out of an enhanced staffing structure for each judge in Child Protective/ Permanency Planning Parts is indefinitely on hold due to current funding constraints.

30 The timeline implemented by the Model Court for processing cases through the initial permanency hearing was based on the "resource guidelines" developed by the National Council of Juvenile and Family Court Judges.

31 A detailed discuss of the tools used in the Model Court to achieve faster permanency can be found in Sara P. Schechter. "Family Court Case Conferencing and Post-Dispositional tracking: Tools for Achieving Justice For Parents in the Child Welfare System," Fordham Law Review. Volume LXX, No. 2, November 2001.

32 Model Court Project: Status Report. New York City Family Court. July 2000.

33 OCA, Annual Report.

Expedited Permanency Time Table*

Family Court		Model Court
	CHILD IS REMOVED	Day 1
	FAMILY COURT INTAKE HEARING	24 hours
	1028 HEARING IF HELD – PRELIMINARY HEARING 72 HRS BEFORE 1028**	72 hours
	PRELIMINARY CONFERENCE IF 1028 IS NOT HELD	10 days
	SETTLEMENT CONFERENCE	40 to
	ACCEPTENCE OF ADMISSION	45 days
There is no timetable for completing this hearing. Under ASFA the countdown to permanency begins here or at date of neglect/abuse adjudication, which ever comes first. If the child is adjudicated abused or neglected before the 60th day of removal, day 1 of placement is the date of adjudication.	**FACT FINDING HEARING**	55 to 60 days
	DISPOSITIONAL CONFERENCE	85 to
There is no timetable for completing this hearing.	**DISPOSITIONAL HEARING**	90 days
	POST DISPOSTIONAL CONFERENCE	180 to 195 days
	SUBSEQUENT POST DISPOSITIONAL CONFERENCES AT DISCRESTION OF THE COURT ATTORNEY REFEREE	9 months
Under ASFA: This hearing must be completed by the time the child has been in foster care 14 months and every 12 months thereafter while a child remains in foster care. Typically in the tenth month of placement a petition is filed for a permanency hearing.	**PERMANENCY HEARING**	14 months
15 month	**TERMINATION OF PARENTAL RIGHTS AGENCY MUST FILE A TPR UNLESS IT DOCUMENTS COMPELLING REASONS NOT TO.**	15 month

* Source: New York City Family Court Model Court Project.

** A 1028 hearing refers to the hearing held at the request of the respondent to challenge the remand of a child to foster care. NY Family Court Act § 1028.

Family Court Mental Health Services: A missing link in efforts to expedite permanency

To help determine what is in the best interest of the child, a judge may order a clinical evaluation of a parent, sibling, and/or the child. Each Family Court, with the exception of Staten Island's Family Court that relies on the South Beach Psychiatric Center for clinical services, has an on-site mental health clinic staffed by psychologists and psychiatrists who performs mental health assessments. In the best-case scenario, after a judge orders a mental health assessment, the court officer will bring the court jacket to the clinic and the client and attorney will be present to schedule an appointment. When the client and attorney are not present, an appointment date is assigned and clients are notified via mailed correspondence.

Mental health assessments range in time from 15 minutes to 4 hours in length and rely primarily on interviews that are narrowly focus on the identification of psychological problems, treatment needs, or multi-service needs. While the reports written by mental health clinicians attempt to address legal mandates, treatment and service needs of a particular case, they only describe the minimal and optimal levels of treatment that should be provided and do not recommend specific programs, services, or treatment plans.

There is wide spread acknowledgement that Family Court clinics encounter extensive waiting periods for assessments as well as significant delays in the submission of reports. While these problems are not new to Family Court Mental Health Services, the failure of clients to show up at scheduled appointments, the competing needs of juvenile justice and abuse and neglect caseloads,[34] and difficulties recruiting and retaining needed psychologists and psychiatrists all contribute to these problems and cumulatively impede the timely achievement of permanency.

Regarding clinic staffing, in 1999 and 2001 14.9 full time clinical lines were funded citywide; yet, only 12 of these positions were filled in 1999 and this dropped to 10 in June of 2001.[35] The difficulty of recruiting and retaining staff reflects both the education and training required of clinical positions and a salary level that is not competitive for experienced psychologists and psychiatrists in the metropolitan area. In December 2001 funding was allocated to increase both the full time head count and salaries, the budgeted number of full time lines is now 21.3 citywide at an average annual salary of $60,000. To expand the pool of eligible candidates for clinical positions the Office of Family Court Mental Health Services has established a summer seminar program that works with child psychology fellows and is also considering reinstating affiliations with locally based child psychology graduate school programs.

Challenges

The responsibility for ensuring the safety and well-being of children in foster care and of expediting permanency falls on multiple parties. The judges, referees, 18-B Panel Attorneys or other parent representatives, Legal Aid Society Attorneys representing children, and ACS attorneys representing the city, all play a role in the legal process before Family Court. Responsibility also falls on ACS caseworkers that oversee each foster child and caseworkers from the child welfare agencies that contract with and are responsible for the day to day care and case management of children in foster care and their families. Many of ASFA's provisions sped up the timeframes for certain court reviews and have created a heightened scrutiny of each child's safety and permanency plan. However, without sufficient resources in the Family Court to reduce the caseloads of judges, and to increase compensation to recruit and retain attorneys (Legal Aid guardians and 18B panel parent representatives), and as long as there is an extreme shortage of support services in the community, such as substance abuse treatment and mental health counseling, New York State will have a difficult time achieving the outcome measures identified by the federal government.[36]

As noted in earlier discussion of the federal Child and Family Service Reviews, New York State was found in substantial conformity with only two of seven outcome areas and in four of the seven systemic factors and was found out of compliance or "not in substantial conformity" in five outcome areas and three of the systemic factors. The state is at risk of losing approximately $2,284,407 if its Program Improvement Plan (PIP) is not approved by DHHS.

34 In FY 1999 3,493 clients were assessed by family court mental health clinicians of which 64 percent were delinquency cases and 22 percent abuse and neglect cases. In FY 2001 3,378 clients were assessed by Family Court Mental Health clinicians of which 70 percent were delinquency cases and 16 percent abuse and neglect cases. Family Court Mental Health Clinical Workload data Fiscal Year 2001.

35 Family Court Mental Health services staffing levels 1999-2002.

36 As mentioned earlier, ASFA intends to shorten the length of stay of children in foster care, increase the frequency of case review for children in care, and to ensure safety and permanency is achieved expediently and in the best interest of the child.

Delayed Disbursement of federal funds to address Family Court workload challenges related to ASFA

Under ASFA, New York State was responsible for being in compliance with the statute for each child who was in foster care as of January 1, 1999. Recognizing that heavily populated states like New York would have tens of thousands of children to bring into compliance with the 15 month TPR petition filing rule, Congress authorized states to phase-in these children a third at a time over six month intervals. By this calculation, New York's foster care population was expected to be in compliance with ASFA by July 1, 2000. In addition to the 42,191 petitions that were filed in the New York City Family Courts between 1999 and 2000[37], the Family Courts also had to review more quickly the permanency goals and plans for the 37,927 children who were already in foster care as of January 1, 1999.[38]

In direct response to ASFA requirements, Family Courts in New York City, New York State and across the country have been working feverishly without additional resources from the federal government, to review the cases of all children in foster care. Congress responded to the overwhelming workload challenges of Family Courts by authorizing $25 million in the Federal Fiscal 2001 Budget. These funds intend to cover the cost of additional judges, referees, and other court staff to process petitions. Initially, proposals earmarked $10 million in funds for court improvement projects, $10 million for better case processing, and $5 million to increase the availability of local Court Appointed Special Advocates (CASA) for children across the country. Unfortunately, states are not automatically entitled to these funds and are required to submit a grant application to DHHS to gain approval. To date, DHHS has not initiated the application process.

37 Twenty-Second Annual Report, New York State Office of Court Administration.

38 Selected Trends in Monitoring and Analysis Profiles, NYS Office of Children and Family Services.

METHODOLOGY

In the Fall of 2000, Citizens' Committee for Children convened its Task Force on the Adoption and Safe Families Act (ASFA) and the Family Courts. The Task Force was comprised of 23 lay and professional volunteers who are members of CCC's Board and Advocacy Council or who have taken CCC's Community Leadership Course. To initiate the Task Force work, CCC held a Policy Briefing in October 2000 with a presentation by the Honorable Joseph Lauria, Administrative Judge for the New York City Family Court. The briefing was attended by over 30 people, including members of CCC's Board and Advocacy Council, attorneys, academics, advocates, and government staff. It served as an opportunity to learn about the reform efforts already underway in Family Court to streamline court processes, ensure the safety of and expedite permanency for children.

As part of our background research, CCC interviewed senior staff from the following organizations: the New York State Office of Court Administration; the Legal Aid Society, Juvenile Rights Division; the New York City Administration for Children's Services, Division of Legal Services; the New York City Administration for Children's Services, Division of Management and Planning. We also met with staff from child welfare agencies that contract with ACS and an attorney representing parents. We conducted a literature review of family and juvenile court reform efforts nationally and read status reports on the implementation of ASFA in other states. We studied state and federal legislation, regulations and guidelines, and reviewed court forms and training materials for child welfare staff. Statistics were collected from the New York State Office of Court Administration and the Administration for Children's Services.

To conduct our fieldwork, CCC developed two surveys, one to interview Family Court judges (Appendix D) and another to interview Family Court referees (Appendix E), which were reviewed for accuracy by experts in the field. Our surveys focused on the following areas: caseload composition, use of referees, available resources, how well attorneys and parents understand the major components of ASFA, Family Court process, permanency hearings, frequency of adjournments, and frequency of petitions filed to terminate parents' rights.

In December 2000, CCC mailed a letter to each of the Family Court judges and referees in New York City inviting their participation in a 30-minute in-person interview with CCC trained volunteers. Our initial intent was to interview judges and referees who sit in Child Protective/Permanency Planning Parts and Juvenile Delinquency Parts, since ASFA applies to some young people in the State's juvenile justice system. We decided to limit the scope of our interviews to judges and referees in Child Protective/Permanency Planning Parts. We were grateful to have Juvenile Delinquency judges eager to participate in our project, even though we were unable to include them in our interviews.

Through an initial solicitation, we were able to secure five judges and one referee. To encourage broader participation from the courts, from February-June 2001, CCC made presentations to the judges and referees in the Manhattan, Brooklyn, Bronx and Queens Family Courts to explain the purpose of our project, the history of CCC, and to answer any questions that the judges and referees had about CCC and this project. As a result of these presentations, additional judges agreed to be interviewed, and CCC secured the participation of 10 of the 22 judges (45%) who sit in Child Protective/Permanency Planning Parts and an additional four of 11 referees (36%) who conduct permanency hearings in Child Protective/Permanency Planning Parts.

Twenty-three trained volunteers, working in pairs, conducted in-person interviews with each of the judges and referees from March–July 2001. CCC assured each judge and referee that all responses would be held in confidence and that no person or court would be named in any of CCC's findings or recommendations. The breakout is as follows: four judges and two referees from Kings County Family Court; two judges from Queens County Family Court; two judges and one referee from New York County Family Court; and two judges and one referee from the Bronx County Family Court. The data collected from our interviews were collated and analyzed, and experts in the field reviewed our recommendations. We also sent draft copies of our report to the Administrative Judge of the New York City Family Courts as well as to each of the Supervising Judges for comments.

The conclusions formed in this report were based on the results of our surveys and the findings and recommendations collected during our informational interviews with experts in the field. Our report focuses exclusively on the impact of ASFA on Family Court operations in the Child Protective/Permanency Planning Parts and does not examine its impact on the work of child welfare agencies, attorneys, or the City's Administration for Children's Services. As we interviewed only 10 of the 22 judges who sit in Child Protective/Permanency Planning Parts and four of the 11 referees who conduct permanency hearings in Child Protective/Permanency Planning Parts of the New York City Family Courts, we do not expect our findings to be representative of the experiences of all Family Court judges and referees. Rather, our findings reflect the experiences of judges and referees in implementing ASFA at a point in time. The report highlight findings and possible solutions and recommendations that might improve the operations of the Family Court and facilitate finding permanent homes more quickly for children in foster care.

Workload and the Family Court: Increased Workload and Few Resources Hinders ASFA Implementation

Each of the judges reports that the average number of petitions on their dockets range from 30-60 daily. Individual judges have increased dockets over the past few years due to a shortage of judges or reassignment of judges to different Parts. This increase has occurred despite a decrease in the overall number of petitions filed[39] as well as a decrease in the number of children in foster care.[40] Some judges report that timelier filing of permanency petitions by the ACS could be a reason for any increase in petitions in individual Parts over the past year, or that some judges inherited dockets from fellow judges, which led to an increase in their daily dockets. Finally, some judges believe that specializing the Parts in Family Court has meant an increase in their individual daily docket because there are fewer judges handling child protective proceedings at a time when there is an increase in the number of petitions alleging termination of parental rights.

Only Half of the Judges Interviewed Report Working With Referees. In an effort to make the most efficient use of the referees, each referee is assigned to preside over uncontested permanency hearings and uncontested termination of parental rights hearings. Referees are assigned to these hearings and not to a particular judge so judges are not able to funnel cases to referees. Some judges expressed frustration about the inability to interact with referees because inadequate interaction prevents judges from better coordinating their calendars.

Of the four referees we interviewed, the average caseload ranges between 30-50 petitions a day, which represents a mix of uncontested permanency hearings and uncontested termination of parental rights hearings. Because referees' calendars are made up of only uncontested permanency hearings, the permanency goal and plan are established and reviewed much more quickly than in the judge's Parts.

Contrary to the experience described above, **the staffing structure of the Model Court is designed to facilitate the timely completion of fact-finding, dispositional and permanency hearings, and to decrease the frequency of adjournments and in doing so to help achieve expedited permanency for children.** The presiding judge in the Model Court in New York City Family Court is paired with a court attorney, a referee and a case coordinator assigned to the Part. The Model Court uses the court attorney to conference each case, bringing all parties together, prior to their appearance before the judge. The referee tracks each family's progress in meeting the goals outlined in the services plan and follows their progress up until the child finds a permanent home. The case coordinator facilitates dispositional case conferencing and provides data entry and administrative assistance. As mentioned earlier, the New York City Family Court intended to assign a referee and case coordinator to each judge sitting in a Child Protective/Permanency Planning Part in order to replicate the structure and case processing of the Model Court. While three "Best Practice" courts will be fully on line this spring, they will benefit only from the presence of a referee and not a case coordinator due to funding constraints. The roll out of enhanced staffing in all Protective/Permanency Planning Parts is also on hold.

RECOMMENDATION: Having the support of a court attorney, a referee and case coordinator in each of the Child Protective/ Permanency Planning Parts will allow judges to front-load each case with services and hold a pre-conference prior to every appearance before the judge. An allocation of $2.76 million, over a one-year period, should be made to support the proposals made by the Administrative Judge of the New York City Family Courts to expand the Model Court. This proposal requires that OCA hire an additional 10 referees and 21 case coordinators to create Model Court Parts in each of the 22 Child Protective/ Permanency Planning Parts in Family Court.

39 Between 1998-2000, there was a 6% decrease in the number of child abuse and neglect petitions filed in the New York City Family Courts. It is important to note that the number of petitions does not reflect the number of cases nor the number of children involved in each case. 52,871 child protective petitions were filed in 1998 versus 50,557 in 2000. Twenty-First Annual Report of the Chief Administrator of the Courts for Calendar Year 1998 and the Twenty-Third Annual Report of the Chief Administrator of the Courts. New York State Office of Court Administration.

40 According to ACS's Annual Report 2001, New York City's foster care population has been steadily decreasing from 40,939 children as of FY1998 to 34,354 as of FY2000. Since the implementation of ASFA, fewer children have been entering foster care. According to ACS 12,536 children entered foster care in FY98 versus 9,583 who entered in FY2000. 13,644 children were discharged from foster care in 1998 versus 13,771 children who were discharged from foster care in FY2000.

Barriers to Expedited Permanency: Multiple Impediments to ASFA Implementation

In 1999, Family Court judges needed over six months from the filing of an original child protective petition to the completion of the fact-finding in over one-third (39%) of the petitions. Judges required an additional three months or more to complete the disposition in another one-third (32%) of the petitions. Of the judges who answered CCC's survey, most estimated that the time it takes to complete the fact-finding hearing has either increased or stayed the same over the past year. Most judges believe that the time to complete the dispositional hearing has generally stayed the same over the past year. By comparison, for calendar year 1999, the Model Court was able to complete the fact-finding and disposition in 88 days (less than three months) for neglect cases, and in 99 days (slightly over three months) for abuse cases.[41]

In 1999, 75% of child protective petitions alleging abuse had three or more adjournments from the filing of the petition until the completion of the fact-finding. Furthermore, 26% of these petitions required an additional 3 or more adjournments from the completion of the fact-finding to the completion of the dispositional hearing.[42] Judges and referees report that the most common reasons for adjournments include the failure of parties to appear, incomplete information presented by attorneys and caseworkers, failure of the parties to make a permanency plan prior to appearing before the court, and time constraints on the judge's docket. Other reasons include the tardy exchange of information between parties, incomplete clinical evaluations, failure of the legal aid attorney to have visited the child prior to the hearing, or the unavailability of medical records. Once adjourned, a judge will reschedule the hearing for the next available opening, which is typically months away due to the judge's overcrowded calendar.

There was no clear trend among the judges interviewed whether the court is able to complete the initial permanency hearing within 12 months after a child has been placed in foster care. The referees we interviewed expressed a similar range of responses, although they stated that the timeliness of the permanency hearing was also dependent on how quickly the judge can complete the fact-finding. Barriers to completing the permanency hearing within 12 months of when a child was placed in foster care include multiple adjournments, nonviable permanency plans, poor information, the court calendaring process, and unprepared parties, lack of assigned counsel for parents.

The majority of judges reported being able to track and monitor a family's progress from the time of removal through the initial permanency hearing. However, fewer judges were able to track and monitor a family's progress from the initial permanency hearing through all subsequent permanency hearings. The inability to track a family's progress can be attributed to the availability and use of court resources in different Parts. Referees may preside over uncontested permanency hearings, including the initial permanency hearing and or all subsequent permanency hearings. In the case of the Model Court, the court attorney is responsible for conferencing each case before the case is brought before the judge, the referee tracks the progress of each case up until permanency is achieved, and the case coordinator facilitates dispositional conferencing and data entry.

In addition to frequent adjournments, the judges interviewed reported other factors that act as barriers to expediting permanency for children in foster care, including the absence of court appointed representation to parents. Section 262 of the Family Court Act establishes the right of indigent parents to counsel from the 18-B Panel of attorneys for representation at the fact-finding, dispositional hearings, and permanency hearing in child protective proceedings. Parents are not guaranteed counsel between hearings. Due to the shortage of 18B Panel attorneys, parents often do not have an attorney present at the initial fact finding or dispositional hearings or at subsequent permanency hearings, unless they are able to afford an attorney or are able to secure representation from the limited number of pro bono legal services organizations and clinics in New York City.

Without continuous representation, parents are left without an advocate to enforce the court's order after the dispositional phase is complete and are left with little leverage if the parents' caseworker is unavailable or not aggressively working with the family to achieve reunification. Furthermore, parents have little or no recourse if the caseworker fails to comply with the judge's visitation order or if the parent wants to request that the court modify or expand the order made at the disposition.

41 Model Court Project: Status Report. New York City Family Court. July 2000.

42 Data on the total number of petitions was not available.

The judges that we interviewed stated that another major barrier to expediting permanency for children in foster care is the lack of community-based services available to parents. It was unclear based on our interviews whether the judges attribute the absence of support services to the caseworkers' inability to make referrals, long waiting lists at many programs, or parents' nonattendance at these programs. Families whose children are in the foster care system generally require various support services to help stabilize their family and work towards reunification with their children. These services typically include mental health counseling, substance abuse treatment, employment services, parenting skills classes, and assistance finding affordable housing. In order for parents to receive the services necessary to be reunified with their children, caseworkers must be able to assess the needs of each family, refer the family to appropriate services and the services must be available in the community. Currently, waiting lists for drug treatment and mental health services in New York City can be months and the average length of stay for children in foster care is approximately four years. Alternatively, in the Model Court the "back-end" tracking process ensures that the case plan does not fall apart, as the case coordinator helps to ensure that parents have access to the services they need.

In an effort to ensure that families can access services and maintain a network of support services once they are no longer connected with the child welfare system, ACS began the implementation of its neighborhood-based child welfare initiative in 1998. Among other goals, this initiative was designed to reduce the trauma to children who are removed from their home and placed in foster care and to provide a network of support services to families in the neighborhoods where they live. Under new contracts, each of the city's 45 contract foster care agencies is assigned to serve a particular community district. Children requiring out of home placement are placed in foster homes in their community district of origin and the foster care agencies are required to develop relationships and linkages with community-based service providers, including mental health programs, substance abuse treatment programs, child care, health care, and employment services, in that same community district. In January of 2001 CCC published a report titled *Closer to Home: Serving Children in the Neighborhoods Where They Live* that examines implementation of the earliest stage of neighborhood based service delivery in the Bronx. It is anticipated that the follow-up report examining implementation in Staten Island, Brooklyn, Manhattan as well as the Bronx will be published in Spring 2002.

Judges and referees recommend that additional resources be allocated to Family Court, including drug screening, social workers, interpretors, and case coordinators. Other suggestions from the judges included locating housing specialists in each Family Court and a New York City Board of Education liaison in each of Family Court. The Board of Education liaison would track children's school attendance and help children re-enroll in school, if necessary, when placed in foster care. The judges in the Brooklyn Family Court have access to the drug screening services provided in the Drug Treatment Part in the Criminal Court and are able to refer parties to the court for screening on an as needed basis.

RECOMMENDATIONS: To enhance Family Courts' ability to properly process each child protective case and expedite permanency for children in foster care the following action must be taken:

Court Reform

- The Governor and Legislature should approve the court reform plan[43] advanced by the Chief Judge of the New York State Unified Court System. This plan will bring needed resources into Family Court. The plan requires an amendment to the State's Constitution, which is a lengthy process requiring approval by two consecutive legislative sessions and a public ballot referendum.
- Assigned counsel should be available to parents through every phase of the child protective case and the fees paid to 18-B Panel attorneys should be increased to $75 per hour for all work in order to retain and recruit needed counsel.
- The Governor, Legislature, and local elected officials should strongly encourage Congress and DHHS to move forward with the distribution of the $25 million allocated in FY2001 for court improvement projects. These funds would provide much needed resources to Family Courts across the nation and would help address the workload challenges that result from ASFA.

43 The court reform plan would streamline and modernize New York's courts by merging the 11 existing Trial Courts into two: a Supreme Court (including the Supreme Court, Court of Claims, Surrogate Court, County and Family Court) and a District Court (including downstate District, New York City County and Criminal Courts, and upstate City Courts). The proposal would also eliminate the limit of 1 Supreme Court judge for each 50,000 people in a district thereby providing the opportunity to increase the number of state Supreme Court judges.

Administrative Reform

- We support the Family Court initiative that would assign one judge to each case from the initial filing of the child protective petition until permanency is achieved.
- We recommend that each judge in the Child Protective/Permanency Planning Parts should be required to schedule a time certain for each appearance in court. At a minimum, the time certain call should be for the morning or afternoon court session. In addition, each judge, whenever possible, should schedule continuous time over a series of weeks instead of months, for each hearing. As demonstrated in the Model Court, the presence of a case coordinator, a court attorney, a referee in each Part facilitates this scheduling method.

Services and Support

- The Mayor and City Council should allocate funds to expand interpretor services available in Family Court and to provide drug screening services for all Family Courts.

Family Court Mental Health Services: A Missing Link in Efforts to Expedite Permanency

Few judges use the clinicians from Family Court Mental Health Services to conduct mental health assessments of parents in child protective cases, primarily because the average waiting period for an assessment is three to five months. All of the judges interviewed responded that the Family Court Mental Health Services are not available on a timely basis and that extensive waiting lists exist in every borough. Based on CCC's interviews, each judge has the discretion to order a mental health assessment of parents and each judge uses a different set of guidelines to determine when an assessment is warranted. For example, one judge stated that the court will only approve the request for a mental health assessment of a parent for neglect cases, while another stated that he or she requires assessments in cases where there is a finding of abuse or a finding based on mental illness. One judge never orders mental health assessments through the Family Court Mental Health Services because the judge's cases do not involve issues of mental illness, while another judge reports ordering mental health assessments of parents in as many fact-finding cases as possible. Another judge reports ordering clinical evaluations of a parent if they are presented with a serious mental health issue.

Even fewer judges' report using the Family Court Mental Health Services to conduct mental health assessments of children. The judges report that most children on their docket are in out of home care and have had the benefit of seeing a therapist through their assigned foster care agency. Alternatively, judges rely on the assessment of a clinician who is arranged for by the child's foster care agency. In a limited number of cases, one judge reports recommending that a child go to a psychiatric hospital for an assessment instead of relying on the Family Court Mental Health Services. If a child has exhibited problems in school, one judge prefers to order the foster care agency to schedule an assessment in the school setting or will rely on the assessment performed by the Committee on Special Education, if the child is eligible. The deficient state of Family Court Mental Health Services is not a new problem. In 1988, Citizens' Committee for Children documented similar issues in its report on the Family Court Mental Health Services called *To Form a More Perfect Union for Juvenile Justice: Mental Health Services and the Family Court.*

Judges also find the quality and thoroughness of the assessments conducted by the Family Court Mental Health Services clinicians to be uneven or poor. We asked each judge to describe the content of the assessments, and although almost all judges listed the same standard components, half of the judges stated that the assessments do not typically address the needs of the court. In general, judges report that the assessments lack specific details about each family and are formulaic, using only boilerplate language. Further, judges report not trusting the objectivity and/or professional judgment of the clinicians, mostly because the clinicians base their assessments on one 45-minute interview with a parent. This interview does not include any observation of the parent/child relationship by the clinician. Rarely does the assessment include a review of past medical and psychological records, nor do the assessments reflect any cultural sensitivity, reports one judge. Another judge went so far as to describe the clinicians as "illness-seekers" who always recommend that a child should be placed in foster care and that the parents' rights should be terminated.

Judges utilize the information in the assessments to determine whether it is safe for a child to be returned home or to determine the parent's level of culpability in a child protective proceeding, among other uses. Without accurate clinical assessments, judges are left to rely on their own observations and reports made by others outside of the mental health field to determine whether a parent is fit to take care of his/her child. Family Court judges are required to be experts in the law, as well as experts in social work, psychology, child development and domestic violence, among other subjects. Of most concern to the judges is their ability to conclude the disposition and permanency plan for each child and their family. One judge reported being unable to decide a permanency goal based on the Family Court Mental Health assessment because the clinicians repeatedly fail to answer the most pressing question of whether the parent can safely take care of the child at home. Furthermore, judges report that these assessments often do not include any treatment-focused recommendations, which judges would find enormously helpful when setting the permanency plan.

RECOMMENDATIONS: It is virtually impossible for judges to be expected to meet the 12-month deadline imposed by ASFA for the completion of permanency hearings if judges are waiting three to five months for a completed mental health assessment. While efforts have been made to increase head count and improve salary levels, HHC should also conduct a management analysis of the Family Court Mental Health Services to improve operations and the timeliness and quality of assessments. Furthermore, the New York City Health and Hospitals Corporation (HHC) and the OCA should revise the evaluation tool used by Family Court clinicians to make sure that it meets the needs of the judges.

The Complexity of Petitions to Terminate Parental Rights (TPR)

Although ASFA established a timeframe within which the state agency must file a TPR petition,[44] ASFA did not alter the grounds that allow a judge to grant a TPR petition and, as a result, free a child for adoption. Based on Section 384-b of New York State Social Service Law, a termination petition can be granted if (1) both parents are dead and no guardian of the person of such child has been appointed; or (2) the parent or parents abandoned such child for the six month period prior to the filing of the petition; or (3) the parent or parents are unable to provide proper and adequate care for their child because of mental illness or mental retardation; or (4) the child is permanently neglected; or (5) the parent or parents severely or repeatedly abused their child and the child has been in foster care for the period of one year prior to the filing of the petition.[45]

Recognizing that each child protective case presents its own set of unique circumstances, Congress outlined three exceptions to the TPR filing rule under ASFA. These include: (1) if the child is residing in kinship foster care; (2) if the state agency can demonstrate a compelling reason why it would not be in the best interests of the child to terminate the parent's rights; or (3) the state agency has failed to provide services for a family that was designated in the case plan.[46] Congress opted not to define under what circumstances a state agency had failed to provide the services to a family documented in the case plan. State OCFS also provided local social service districts with little guidance as to how to define these circumstances.[47] In New York City, ACS attempted to clarify this exception to the TPR filing rule by stating that (1) failure to refer, (2) outside institutional resistance, (3) unavailability of service or (4) lack of treatment slots could all fall into this exception category.[48]

It is important to note that ASFA does not specify any other deadline for filing a TPR petition once a child has been in foster care for longer than 15 months. If ACS determines that the child falls under an exception to the rule and does not file a TPR petition at month 15, ACS still retains the discretion to file a TPR petition whenever the agency believes that sufficient grounds exist to free the child for adoption. However, before a parent's rights can be terminated, the Family Court must hold a hearing to determine whether sufficient grounds exist to grant the TPR petition.

44 As noted earlier, once a child has been in care 15 of the last 22 months a TPR petitions must be filed unless the case meets allowable exception criteria.

45 Section 384-b (4)(a-e), Social Services Law, Book 52A, McKinney's Consolidated Laws of New York Annotated.

46 Federal ASFA; section 384-b(3)(l)(i) of Family Court Act.

47 OCFS Informational Letter, 98 OCFS INF-3, November 17, 1998.

48 Implementation of the Adoption and Safe Families Act; Part I-Guidelines for Permanency Reviews. New York City Administration for Children's Services, March 12, 1999.

According to NYS ASFA, it is ACS and not the Family Court that is responsible for determining whether a child and family fall into one of the exceptions to the TPR filing rule. ACS issued detailed guidance on this topic in its ASFA Preliminary Review Guidelines dated March 12, 1999. In New York City each contract foster care agency is responsible for submitting every six months (in its UCR[49] to ACS) a list of cases for which the agency is not filing a TPR petition at 15 months. The contract foster care agency must have a supervisor, who is at least two levels above the caseworker, agree to the caseworker's decision not to file the TPR petition once a child has been in foster care for 15 months. This information is reviewed by the caseworker at ACS who is assigned to oversee the work of the contract foster care agency. It should be noted that while ACS defines whether or not a case falls into an exception category, the Family Court judge functions as an ultimate safeguard and can order the agency to file a TPR.

According to OCA Family Court Statistics, for the three years preceeding ASFA 3,600 TPR filings were made annually. TPR filings in the two years following ASFA's enactment went to 4,000 annually, an increase of 400 filings. **The judges interviewed in our survey suggested that the TPR petitions had increased since 2000. The judges attributed this increase to the mandates under ASFA that require the state agency to file a TPR petition when a child had been in foster care for 15 of the last 22 months.**

RECOMMENDATION: ACS should track number of children who fall into each exception category monthly and the reasons given by each contract foster care agency, to ascertain whether the exceptions to the TPR filing rule are being used properly. To expedite permanency for children, ACS should also track the number of children who have been freed for adoption but have not yet had their adoption finalized and track the length of time before a child has his/her adoption finalized.

Parents and ASFA : Few Parents Understand ASFA or its Influence on Parental Rights and Responsibilities

Fewer than half of the judges interviewed believe that parents are generally well informed about the implications of the Adoption and Safe Families Act (ASFA). It is important to note that not all of the judges felt equipped to answer whether parents are knowledgeable about ASFA. Of those judges who could comment on parents' understanding of ASFA, they report that parents are generally unaware of ASFA timeframes and that ASFA provides for exceptions to the 15-month TPR filing rule. Furthermore, judges' report that parents generally do not understand the purpose of the permanency hearing and permanency goals, nor are parents knowledgeable about their rights in a child protective proceeding and the ability to access certain support services. One of the judges stated that caseworkers use ASFA as a hammer and are quick to tell parents about the TPR filing rule, without explaining to parents the exceptions to the filing rule and that parents have access to support services.

There was no clear trend among the referees interviewed whether parents are generally knowledgeable about the major requirements under ASFA. One referee stated that few parents attend the permanency hearings, while another expressed confusion why parents do not comply with the service plan. The referee could not discern whether parents were not being referred to support services or if they were simply unable to comply with the court's requirements. To help educate parents, one referee supplies handouts in the Part that explain parents' rights at permanency hearings and the requirements under ASFA and another judge reports discussing the 15 month TPR filing rule during the parent's first appearance before the judge. In the Model Court, the case conferencing process helps to ensure that parents are engaged and informed throughout the entirety of the case.

RECOMMENDATION: Without this essential information, parents do not understand the purpose of the permanency hearing and permanency goals, nor are parents knowledgeable about their rights in a child protective proceeding and the ability to access certain support services. Without knowing their rights throughout a child protective proceeding, parents are at a significant disadvantage when seeking support services and ensuring that their caseworkers are making "reasonable efforts" to reunify them with their children. This can lead to further delays and longer lengths of stay for children in foster care.

ACS has developed a Parent's Guide to ASFA. To supplement the relationship between parents and 18-B Panel attorneys and other parent representatives, this document should be distributed at Family Court and when case conferencing occurs. In addition greater efforts

49 The Uniform Case Record (UCR) is submitted by the contract foster care agency to ACS on a semi-annual basis to document a family's progress towards reaching a permanency goal for their child.

should be made by ACS to educate parents prior to their appearance in court. Parents should be informed of their rights and ASFA's requirements at ACS's 72-hour case conference and again at the 30-day conference.

18-B Panel Attorneys / Legal Guardians and ASFA: Large Caseloads, Shortage of Attorneys, Poor Compensation, and Limited Parental Representation Hinders ASFA Implementation

Half of the Judges and Referees Interviewed believe that 18-B Panel Attorneys and other Parent Representatives are generally well informed about ASFA. All of the judges were prepared to comment on the level of expertise possessed by the 18-B Panel Attorneys, and most concluded that the 18-B Panel Attorneys are much more prepared than in the past.

None of the judges or referees interviewed commented on any areas where JRD attorneys lacked information about ASFA. The Juvenile Rights Division of the Legal Aid Society (JRD) contracts with the City to provide legal representation to children in child protective proceedings. Called Law Guardians, the Legal Aid staff attorneys are assigned to a child from the filing of the original child protective petition until a child reaches permanency. Each attorney has undergone extensive training on the requirements of ASFA, including the use of permanency hearings and the "reasonable efforts" requirements to prevent placement and reunify a child with his/her family. Further, JRD attorneys have offices for staff attorneys in each Family Court with social work staff available for consultation. Some boroughs also have access to an education advocate to help foster children re-enroll in school or receive special education services.

To ensure continuity of representation of parents in child protective proceedings, the referees report assigning the same 18-B Panel Attorney to represent a parent at each hearing, if possible. Without counsel, parents are left without an advocate to enforce a judicial order that mandates the foster care agency to assist the parent in locating and accessing services (such as substance abuse treatment, mental health counseling and locating housing) that are essential to their reunification with their children.

Although we were unable to secure estimates of the caseloads of 18-B attorneys, our interviews with the judges reveal that these attorneys work under an almost unmanageable working conditions and volume of cases. Not only are their caseloads overwhelming in size leaving some parents with only five minutes time with their attorney before appearing before a judge, but many 18-B Panel attorneys do not have office space in the Family Court buildings where they can meet with their clients or make phone calls. With so little time for their clients, it is likely that parents do not form a relationship with their attorney that allows a free exchange of information relevant to the case. As a result, parents can become extremely frustrated, feel helpless, and in some cases judges believe that this causes parents not to take responsibility for their case and to blame the foster care agency for their situation. One judge stated that it is sad that parents do not understand how quickly the process moves and are surprised when faced with a hearing to determine whether their rights should be terminated.

Complicating matters is the shortage of 18-B Panel Attorneys available to represent parents in child protective proceedings. The lack of assigned counsel is directly attributable to the low fees that 18-B Panel Attorneys are paid—$40 per hour for in court work and $25 per hour for out of court work. These conditions prompted a proposal from the Chief Judge of the New York State Court of Appeals to the Governor and Legislature to increase these fees to $75 per hour for all work. The Governor agreed to convene a Task Force made up of members appointed by the Governor, the State Assembly and the Senate, to review the 18-B fee structure and make recommendations for improving the assigned counsel process. This Task Force began meeting in January 2001, however, to date no report or recommendations have been generated.

RECOMMENDATION: Assigned counsel should be available to parents throughout every phase of a child protective case until a child finds a permanent home, either through reunification or adoption. CCC recommends that the Governor and Legislature allocate $100 million to increase the assigned counsel rates to $75 per hour for all work.

Testimony used During Family Court Hearings : Incomplete Information Limits the Ability of Judges to Meet ASFA Timelines

In general, judges report that ACS caseworkers testify at permanency hearings, although few judges have found their testimony to be complete and thorough. In general, judges report that contract agency caseworkers testify at permanency hearings although only half of the judges found their testimony to be complete and thorough. Because contract agency and caseworker testimony is not always complete, judges will often rely on the testimonies of other witnesses, such as foster parents, psychologists, and other service providers. The testimony of these witnesses helps

the judge determine the permanency goal and plan. The judges also use their testimony to determine whether the foster care agency is making "reasonable efforts" to reunite a family and whether the parents' are working to expedite permanency for their child.

The judges whom we interviewed rely on a range of written reports to learn the status of a child and family, and the "reasonable efforts" being made to reunify families. For example, some judges refer to the Uniform Case Record (UCR), which is submitted by the contract foster care agency to ACS on a semi-annual basis to document a family's progress towards reaching a permanency goal for their child. Judges also rely on the Investigation and Report, which is another status report on the child and family's status and "reasonable efforts" made by the foster care agency to reunify the family. Another report that judges relies on is the "90 day report," which ACS is required to submit no more than 90 days after a child has been placed in foster care, to document the "reasonable efforts" made by caseworkers and to review the status of the child and family.

Based on our interviews, few judges find the Uniform Case Records (UCR) to be complete and thorough. Referees report that UCRs are submitted at some permanency hearings; however, few of the referees found the UCRs to be generally complete and thorough. They typically lack specific information about the status of the child and family and the "reasonable efforts" made towards reunification. To supplement the UCRs, the referees rely on other written materials, including permanency reports from contract agencies, psychiatric and psychological evaluations, school records, and medical records, records from State OCFS, and reports from substance abuse treatment programs. Further, we found that the information included in a "90-day report" is often outdated by the time the case comes before the judge. It is not uncommon for the information in the "90-day report" to be as much as seven months old or more when it comes before the court. Alternatively, the judge will order the ACS or contract agency caseworker to submit a written report to the judge prior to a permanency hearing and will specify the information to be contained. The ACS attorney will also submit status reports from the contract foster care agency and/or ACS, drug treatment reports, letters from therapists, mental health assessments, and certificates of completion to demonstrate that a parent has complied with the court's order.

Too often, judges reported that the information contained in the UCR, the "90-day reports" and other written reports ordered by the judges' lack specific information about each child and family's progress. Furthermore, the judges reported that this information is often inaccurate or contradictory with no cogent standard for "reasonable efforts." Names and dates of appointments with drug treatment providers, therapists, parenting skill classes, and visits with a child, among other essential information are missing, as well as information about the child's behavior and relationship with the parent. Overall, the judges reported incredible frustration with the quality of any written reports from ACS or contract agency caseworkers submitted to the court.

To standardize the information presented to judges at each permanency hearing and strengthen the preparedness of caseworkers, ACS has provided its casework staff with a permanency review checklist to ensure that caseworkers are prepared to present the judge with a permanency goal, a coherent plan for achieving that goal, and a detailed status report of the agency's and the family's efforts to expedite permanency for children in foster care. ACS has also provided training on permanency hearings to ACS caseworkers and contract foster care agencies.

RECOMMENDATION: We recommend that ACS reduce the caseloads of its caseworkers to ensure that its caseworkers have complete knowledge of their clients and are well prepared at each court appearance. Furthermore, we urge ACS to require its caseworkers to meet with each child prior to each hearing in court. ACS should also ensure that the documentation in each case record is complete and up-to-date to ensure better reporting to the judges.

ACS Attorneys and ASFA: Training, Caseload Size, and Collaboration with Caseworkers Influences ASFA Implementation

Almost all of the judges interviewed report that ACS attorneys are generally well informed about the requirements under the Adoption and Safe Families Act (ASFA). The judges believe that the quality of representation from ACS attorneys and their level of preparedness in court had improved over the past year. Interestingly, the referees interviewed were less complimentary of the ACS attorneys than the judges, however, the referees did believe that the ACS attorneys are better trained now and are competent regarding the ASFA timeframes.

One judge stated that some ACS attorneys, although well versed in the ASFA timeframes and mandates, are unable to translate this understanding into practice on each case. One judge reported that ACS attorneys rarely ask the judge to make findings about "reasonable efforts" and fail to propose orders to the judge that include ASFA findings. It was another judge's experience that some ACS attorneys do not know how to calculate the ASFA time frames, including when to file a permanency petition and what constitutes "reasonable efforts" to prevent removal or reunify a family. Overall, the judges that we interviewed were positive about the progress that ACS attorneys have made in the last year to improve their performance.

Since the passage of NYS ASFA, ACS has increased its number of attorneys by 28% for a total of 228 attorneys with each carrying a caseload of approximately 55 cases. ACS has a goal to hire 240 attorneys. Since the implementation of NYS ASFA, ACS has expanded its training for new attorneys to include teaching on the legal mandates under NYS ASFA and timeframes instituted to expedite permanency for children in foster care. In addition, each of the ACS attorneys must attend two one hour trainings each year on NYS ASFA and supervising attorneys must attend additional trainings as well. The Division of Legal Services at ACS also drafted a checklist to be completed by the ACS caseworker that outlines the requisite questions to be answered in preparation for a permanency hearing. The ACS attorneys are responsible for giving this checklist to the ACS caseworker and ensuring that all necessary information is included prior to appearing in court.

The ACS Division of Legal Services holds weekly meetings with the ACS Deputy Commissioner for Foster Care and Preventive Services and ACS program staff to review the volume of petitions filed requesting permanency hearings. ACS has also developed legislation designed to improve the calendaring of cases in the Family Courts, to ensure that the Court has the most current information on each case, and that permanency can be more expeditiously achieved. The legislation proposes to keep a case on the Family Court calendar after disposition, set a court date for the next permanency hearing, and notify all parties of the date. It would require that permanency hearings be held no later than the earlier of either six months after the initial placement, or at one year from the date the child was removed. It would require every child protective case to be assigned to the same judge from fact-finding through permanency and require the Family Court judges to schedule each permanency hearing every six months that a child is in care. Regarding representation of appointed counsel, it would require continuous representation through the conclusion of disposition on a TPR petition.

RECOMMENDATION: We recommend that ACS continue efforts to educate its lawyers about the requirements under ASFA. Recognizing that regular meetings are held between senior staff from the ACS Division of Legal Services and the ACS Division of Child Protection, we recommend that additional protocols be established to coordinate preparation between the ACS attorneys and casework staff prior to all court appearances. We recommend that ACS require its attorneys and caseworkers (including the ACS and contract agency caseworker) to have a conference before any appearance in court, to brief each other on the permanency plan and status of child and family. We urge the Governor and the Legislature to carefully consider legislative proposals that would improve the calendaring of cases in the Family Courts. Additionally, we reiterate our recommendation that resources should be allocated to support the replication of staffing and case processing of the Model Court, by assigning to each judge sitting in a Child Protective/Permanency Planning Part a referee and a case coordinator. Such an investment would greatly enhance the ability of the Family Court to improve the calendaring of cases, ensure that the Court has the most current information on each case, and that permanency can be more expeditiously achieved.

ACS Caseworkers and ASFA: Size of Caseload and Collaboration with Provider Agencies Influence ASFA Implementation

Although judges and referees have varying opinions of how knowledgeable ACS and contract agency caseworkers are about the requirements under ASFA, many believe that more ACS caseworkers are well informed about ASFA than are contract agency caseworkers.

The judges and referees interviewed had mixed opinions on whether the ACS and contract agency caseworkers are well informed about the requirements of ASFA. In particular, one judge and one referee believe that ACS caseworkers are better informed now about permanency hearing timeframes and TPR filing deadlines and that caseworkers are more diligent about informing parents of ASFA timeframes than in the past. Another judge stated that ACS and contract agency caseworkers perform as well as can be expected given their high caseloads, the number of court appearances required of them and the poor calendaring system in place at Family Court. A few judges felt

ill equipped to comment on how knowledgeable ACS and contact agency caseworkers are about the ASFA requirements because the judge speaks to the ACS attorney in the courtroom and not to the caseworkers.

Although the performance of ACS caseworkers seems to be improving, judges report that many ACS and contract agency caseworkers still lack basic information about the requirements under ASFA and are confused about how to define "compelling reasons" as it relates to the filing of a TPR petition. Further, one judge stated that ACS and contract agency caseworkers need to correct the mindset that all children have to be placed in foster care and should approach their work on a case by case basis.

To ensure that New York City is in compliance with the ASFA timeframes and requirements, ACS has reviewed its permanency principles and produced numerous written procedures, guidelines and policy memos to direct service staff as well as the Executive Directors at each of the City's 45 contract foster care agencies. ACS provided its casework staff with a permanency review checklist to ensure that caseworkers are prepared to present the judge with a permanency goal, a coherent plan for achieving that goal, and a detailed status report on the agency's efforts and family's efforts to expedite permanency for children in foster care. ACS has also provided training on permanency hearings to the contract foster care agencies. In addition, ACS provides a monthly list to each of its contract agencies, accounting for the length of stay of children in care to ensure that agencies file timely permanency and TPR petitions in Family Court.

RECOMMENDATION: We recommend that ACS continue its efforts to reduce the caseloads of caseworkers and to improve upon its efforts to reduce caseloads for the contract agency caseworkers, which would allow more time to prepare for and appear in Family Court. We also recommend that ACS require its attorneys and caseworkers (including ACS and contract agency caseworkers) to have a conference before any appearance in court, to brief each other on the permanency plan and status of child and family. Lastly, we recommend that ACS create an ASFA training booklet for direct care and contract child welfare agency caseworkers to help to expedite permanency for children in foster care – this booklet should be incorporated into the agencies "common core" caseworker training program.

Conclusion

Although intended to protect the safety of children and shorten the length of stay of children in foster care, legislation alone will not move foster children more quickly into permanent homes. The New York State Office of Court Administration has been able to secure some additional resources to replicate the Model Court in each of the Child Protective/ Permanency Planning Parts and to build new Family Courts in Queens and Brooklyn. However, adding more court personnel to conduct pre-conferences and better track families progress alone, without also improving training and increasing the number of attorneys and caseworkers available to attend each conference and court hearing will severely jeopardize the court's best efforts to expedite permanency for children. Furthermore, a lack of community based support services, such as substance abuse treatment, mental health counseling, employment services and child care, also constricts the court's ability to help families move towards reunification or adoption.

Although ASFA set strict timeframes for the Family Court's initial review of the child's permanency goal and plan, Congress gave states wide latitude in its interpretation of the exceptions to the TPR filing rule. A review of the number of exceptions applied to families by ACS and the contract foster care agencies and the reasons for approving the exceptions is crucial to enable New York City to track whether the exceptions are being used to insure child safety while also expediting permanency for children in foster care. Court improvement projects like the Model Court in Manhattan's Family Court have proven that adequate court resources, the involvement of parents and relatives early on in a child protective case, and closely tracking a family's progress towards completing the permanency plan, can safely expedite permanency for children in foster care. For too many children, foster care has become a long-term experience, causing unnecessary trauma to children, many of whom are eventually reunited with their families. By requiring more frequent appearances in the Family Court, judges, attorneys, caseworkers and parents have more opportunities to work together to find safe and permanent homes for children, either through reunification, adoption or another permanent living arrangement.

Glossary

Adjournment: Postponement of a hearing to a later date.

Case Coordinator: In this report case coordinator refers to a staff person assigned to the Model Court Part of New York County Family Court. The case coordinator is responsible for collecting information from each of the parties to aid the referee in conferencing all cases before they appear before the judge. The case coordinator also completes required data entry.

Child Protective Case: A Family Court proceeding originating by the New York City Administration for Children's Services (ACS) to explore allegations of abuse and neglect of a child. The court shall appoint a law guardian to represent the interests of the child and counsel for indigent parents.

Concurrent Case Planning: Reasonable efforts to finalize an alternate permanency plan are made at the same time (concurrently) as reasonable efforts to reunify a family are made.

Contract Foster Care Agency: A not-for-profit foster care agency that contracts with the New York City Administration for Children's Services to provide foster care services.

Court Ordered Services: The Family Court judge can order the provision of services or assistance to a child and his or her family to facilitate the protection of the child, the rehabilitation of the family and as appropriate, the discharge of the child from foster care. These services can include preventive services, parenting skills classes, mental health treatment and substance abuse treatment. The judge orders these services, but judges cannot guarantee that these services are available in the community. It is the responsibility of ACS to carry out the judge's order and find appropriate services for their clients.

Dispositional Hearing: This hearing takes place after the fact-finding hearing is complete. If allegations of abuse or neglect are proven at the fact-finding hearing, at the dispositional hearing the judge decides, based on the best interest of the child, what services are necessary to reunite the family with the child.

Docket: The calendar of cases for a Family Court judge.

Fact-Finding Hearing: This is a hearing before a judge to determine whether allegations of abuse or neglect can be substantiated.

Foster Care: Out-of-home care provided for an abused or maltreated child who is placed in a kinship home, foster boarding home, or congregate care facility.

Foster Care Entry: The earlier of the first judicial finding that the child has been subjected to child abuse or neglect or 60 days after the date on which the child is removed from the home.

Initial Permanency Hearing: This hearing can be before a Family Court judge or a Referee to decide on one of five permanency goals for a child in foster care. These goals include: return to parent, legal guardianship, permanent placement with a fit and willing relative, and "another planned permanent living arrangement." The first permanency hearing is to be held in Family Court 14 months after the child enters foster care or after the first judicial finding that the child has been subjected to abuse or neglect, whichever occurs earlier.

Law-Guardian: Court appointed attorney to represent a child who has been allegedly abused or neglected. Generally Legal Aid attorneys are Law Guardians on most cases of alleged child abuse or neglect.

Legal Guardianship: The term is defined to mean a judicially created relationship between a child and caretaker, which is intended to be permanent and self-sustaining, as evidenced by the transfer of parental rights related to protection, education, care and control of the child, custody of the child, and decision making. The term refers to the caretaker in such a relationship.

Original Child Protective Case: The first filling of allegations of abuse and neglect against a parent or guardian. Alternatively, there may be derivative abuse or neglect allegations filed against a parent that include additional children.

Petitions: Attorneys file a petition to request a particular Family Court hearing or action.

Permanency Goal: Each child who is placed in foster care has a permanency goal. The permanency goal determines what the plan is for finding that child a permanent living situation. Any child in foster care has one of five goals: reunification with parent, adoption, legal guardianship, permanent placement with a fit and willing relative, and "another planned permanent living arrangement." A child's permanency goal can change while in foster care based on the circumstances of his/her case.

Reasonable Efforts: According to final federal rules for implementing ASFA reasonable efforts shall be made to (1) maintain the family unit and prevent unnecessary removal of a child from the child's home, as long as the child's safety is assured; (2) effect the safe reunification of the child and family; (3) make and finalize alternative permanency plans in a timely manner when reunification is not appropriate or possible. The child's health and safety shall be the paramount concern in making reasonable effort findings.

Referee: A referee is an attorney who meets with attorneys and all parties involved in a case in attempt to reach agreement before trial. The referee may hear and decide a case and issue orders.

Service Plan Review: under State and City regulations, foster care agencies must conduct a service plan review every six months that a child is in foster care to track the family's progress and decide the child's permanency goal. All work accomplished in the Service Plan Review is documented in a Uniform Case Record (UCR).

Termination of Parental Rights: A petition filed in the Family Court by an attorney representing a contract foster care agency to hold a hearing to judge whether a parent's right should be terminated.

Uniform Case Record (UCR): All contract foster care agencies are required to fill out this form for each child in care, every six months. This form is completed based on the information discussed and reviewed in the service plan review. The UCR must accompany a petition for a permanency hearing and must contain the child's permanency goal and projected time frame for its achievement; the reasonable efforts that have been undertaken and are planned to achieve the goal; impediments, if any, that have been encountered in achieving the goal; and the service plan for the child and the child's parents.

18-B attorneys: Attorneys who are appointed by the Family Court to represent indigent parents.

1055 Proceedings: Family Court hearing to determine the need for an extension or continuation of placement in foster care. At this hearing, the court decides whether the conditions and circumstances giving rise to the order or extension of placement in foster care have changed since the issuance of the order. This hearing also determines whether an extension of placement is consistent with the best interest of the child.

APPENDIX B

THE DEPARTMENT OF HEALTH AND HUMAN SERVICES, ADMINISTRATION FOR CHILDREN AND FAMILIES, CHILD WELFARE OUTCOMES 1998[50]

II. The Development of the Outcome Measures

The national goals of **safety, permanency, and well-being** provide the framework for the development of the outcome measures. The Department broadly defines the goal of safety as the protection of children from abuse or neglect in their own homes or in foster care. Permanency is conceptualized as children having stable and consistent living situations (such as living with their families, living with adoptive families, or living with legal guardians), continuity of family relationships, and community connections. Well-being is defined as families having the capacity to provide for their children's needs, children having educational opportunities and achievements appropriate to their abilities, and children receiving physical and mental health services adequate to meet their needs.

Every child deserves a safe, permanent, and loving family.

Although there is general consensus among child welfare professionals and advocates that child safety, permanency, and well-being are valid goals, there were no previously established national outcome measures to assess performance related to them. To meet this need and respond to the congressional directive in section 203 of the Adoption and Safe Families Act of 1997 (ASFA), the Department established a consultation group to help in the development of outcome measures. This group included representatives from State, Tribal, county, and municipal child welfare agencies; private nonprofit child and family services agencies; State legislatures; Governors' offices; juvenile and family courts; local child advocacy organizations; and a national public employees' union. The Department also invited representatives from national organizations to serve as resources to the consultation group. A list of the consultation group members and the representatives of the resource organizations can be found in appendix C of this report.

During the fall of 1998, the Department engaged the consultation group in a series of discussions that resulted in four principles that guided the development of the child welfare outcome measures presented in this report. This chapter describes the four principles, gives the rationale for selection of the outcome measures, and introduces contextual information that is used to aid in interpreting each State's performance on the outcome measures.

Guiding Principles

In sharing their experiences and opinions, the consultation group identified a number of key issues that have important implications for using outcomes to assess the performance of State child welfare systems. As a result of these discussions, the Department established the following principles:

- **The outcome measures should reflect performance that is to a large extent within the control of State child welfare systems.** It is difficult to identify outcomes that can be linked solely to child welfare system operations because of the dependency of child welfare on the functioning of many other systems. The outcomes related to safety, permanency, and well-being are significantly influenced by factors beyond the control of a child welfare agency. For example, the capacity and functioning of juvenile or family court systems, juvenile justice systems, law enforcement systems, mental health services, and substance abuse treatment systems in a State or community significantly affect a child welfare agency's ability to impact outcomes in the areas of safety, permanency, and well-being for the children it serves. In addition, economic conditions or the extent of substance abuse problems in a community can increase the number of children who are unsafe in their own homes or reduce the number of children who can be safely returned to their families once they have been removed from their homes.

It is critical that communities establish cohesive systems of supports for children and their families.

- **The outcome measures should be assessed in ways that limit the potential for misinterpretation.** Determining the meaning of changes in State performance is complex. Such changes can be the result of other influencing factors and/or imbalances in the child welfare system. Basically, positive or negative changes must be viewed in relation to other conditions in the State. For example, an increase in the number of child abuse and/or neglect reports could be the result of an economic downturn or an increase in the extent of substance abuse problems in a community. Equally important is for States to focus attention on strengthening all parts of the system to ensure a balanced approach to systems performance. This will result in (1) better decisions for the children and families who come into contact with the child welfare agency and (2) improved performance on the outcome measures overall. Conversely, if a State focuses on improving one part of its system such as

50 http://www.acf.dhhs.gov/programs/cb/publications/cwo98

reducing the time children spend in foster care, the State may achieve the desired goal but negatively impact some other part of the system, e.g., increase the rate of re-entry of children into foster care.

The challenge of ensuring a balanced approach to improving all parts of a State's child welfare system is to understand the magnitude of changes that the State must make.

- **The outcome measures should be used to assess the continuous improvement of each State over time, rather than compare the performance of States with one another.** Comparison across States on their performance on the outcome measures is difficult due to variations in State population demographics, programs, and policies and must be undertaken with great care. State performance is better assessed by tracking a State's own continuous improvement over time. Some useful factors in considering State variations may include the proportion of children in poverty in each State; the State's definition of abuse and/or neglect; the State's standards that prompt the removal of children from their homes and the decision to return them home; the resources available in the community to meet the needs of children and families; the resources allocated by the State to the child welfare system to develop and test innovative strategies to attain desired outcomes; and the internal capacity of the child welfare agency in terms of staffing, caseload size, and other factors.

In future years, the Annual Report will be designed to provide trend data that compare a State's current performance to its performance in past years.

- **Outcome measures should be based on data that are available through existing data collection systems in order to limit the reporting burden on the States.** There have been great advances at the State and Federal Government levels in collecting, analyzing, and reporting child welfare data, using the National Child Abuse and Neglect Data System (NCANDS) and the Adoption and Foster Care Analysis and Reporting System (AFCARS). This is evident by the number of States reporting data in this first annual report. Despite this progress, a significant number of States are in the process of improving their data collection capabilities through the design and implementation of new and improved Statewide Automated Child Welfare Systems (SACWIS). As a result, many State SACWIS systems are still developing and being refined, which means that the national collection and reporting of data to support measuring some or all of the outcomes are not yet available for all States. The Department is confident that State data will continue to improve each year and in subsequent annual reports and is providing assistance to States on developing and implementing their SACWIS systems, in addition to assistance on improving the quality of their data submissions on the outcome measures.

The outcome measures have been designed and calculated using two national data collection systems currently in operation, the National Child Abuse and Neglect Data System (NCANDS) and the Adoption and Foster Care Analysis and Reporting System (AFCARS).

The Final List of Outcomes and Measures

Within the context of the above principles, the Department published a preliminary list of child welfare outcomes and measures in the Federal Register for public comment on February 2, 1999. Based on an analysis of the comments received in response to this notice, numerous changes were made to the preliminary list. On August 20, 1999, the Department published a final list of outcomes and measures in the Federal Register. The final list, which is presented below, forms the basis for this first annual report and for subsequent annual reports to the Congress on the performance of States in operating child welfare programs.

The final list of outcomes and measures does not encompass all areas of State child welfare functioning. It does, however, capture essential performance features related to the goals of safety and permanency. Outcomes relevant to the well-being of children served by the system, such as children's physical health, mental health, and educational status, are not included in the current set because existing national child welfare data systems do not collect these data. However, the Department is committed to developing outcomes and measures relevant to child well-being in the future, particularly those pertaining to the health and educational status of children in foster care. (See appendix D for a list of the child welfare outcomes and measures.)

The Department plans to initiate activities related to the development of child well-being outcome measures in 2000.

The outcomes and measures pertaining to safety and

permanency, as well as the rationale for their inclusion in this report, are described below.

Safety Outcomes

Safety-related outcomes are intended to assess a State child welfare system's effectiveness in protecting children from abuse or neglect in their own homes and in foster care. A system may be viewed as achieving the objective of child safety if, at a minimum, it (1) reduces the rate of recurrence of abuse or neglect of children who come into contact with the child welfare agency and (2) reduces and even eliminates harm to children by foster parents and institutional staff.

These requirements are reflected in the following safety outcomes:

Child Welfare Outcome 1: Reduce recurrence of child abuse and/or neglect. While State child welfare agencies are required to work toward the prevention of child abuse and neglect, they cannot be held directly accountable for the rate of occurrence of initial, substantiated child abuse and neglect. Other factors influence the initial rate of occurrence such as the extent of substance abuse problems in the community and the capacity of substance abuse treatment centers to deal with these problems. However, State child welfare agencies can and should be held accountable for the rate of recurrence of substantiated or indicated maltreatment. Once an allegation of initial child abuse and/or neglect is substantiated or indicated, State child welfare agencies and courts must ensure the safety of children by providing quality services to enable families in crisis to address problems. It is only when timely and intensive services are provided to families that agencies and courts can make informed decisions about the parents' ability to protect and care for their children. Based on this premise, the following measure was developed:

Measure 1.1: Of all children who were victims of substantiated or indicated child abuse and/or neglect during the reporting period, what percentage had another substantiated or indicated report within a 12-month period?

The safety of children is the paramount concern that must guide all child welfare decision-making.

Child Welfare Outcome 2: Reduce the incidence of child abuse and/or neglect in foster care. State child welfare agencies have a responsibility for ensuring that children are not abused or neglected by their caregivers while under the placement and care responsibility of the State, either in a family foster home, group home, or institutional setting. The measure pertaining to this outcome follows:

Measure 2.1: Of all children who were in foster care during the reporting period, what percentage was the subject of substantiated or indicated maltreatment by a foster parent or facility staff?

The Department recognizes that safety is a paramount consideration in all decisions affecting children who come into contact with child welfare agencies. It also recognizes that the vast majority of these children do not enter foster care and, therefore, is interested in exploring additional outcome measures to understand what happens to these children and their families. Two questions are of particular concern: What services do children who do not come into foster care receive? How does the quality of their lives, particularly the risk of continued maltreatment, change as a result of these services? These questions will be carefully considered in determining the outcomes to be added in the future.

Child welfare safety measures 1.1 and 2.1 and permanency measures 4.1, 4.2, 5.1, and 6.1 have been incorporated into the Department's new results-focused monitoring process, the Child and Family Services (CFS) review.

Permanency Outcomes

Permanency for children in foster care has been a key child welfare system goal since passage of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96–272). In seeking to achieve this goal, child welfare agencies must focus their efforts on ensuring that children do not stay in foster care longer than needed. Foster care is a temporary setting and not a place for children to grow up. Permanency may be achieved when a child is reunified with his or her family, placed with a legal guardian, or adopted. For the five permanency outcomes described below, the term "foster care" refers to all out-of-home care arrangements for children under the placement and care responsibility of the State child welfare agency.

The outcomes and measures developed to assess permanency are based on the belief that a system's effectiveness in attaining permanency for children is not measured solely by the number of adoptions, reunifications, and legal guardianships. Effectiveness also depends on the timeliness of achieving these actions and how lasting they are—i.e., the children do not re-enter the foster care system. In addition, the permanency measures address the child welfare system's effectiveness in attaining permanency for children of color, children with

disabilities, and adolescents.

The permanency outcomes are presented below:

Child Welfare Outcome 3: Increase permanency for children in foster care. This outcome reflects a fundamental goal of the child welfare system to attain permanency for children in foster care, either by returning them to their original family or finding a new family when they cannot return home. In effect, child welfare agencies seek to minimize the number of children who "grow up" in foster care—i.e., those children who enter foster care when they are young and leave through emancipation. Furthermore, States should hold themselves accountable to be equally successful in attaining permanency for all children under their placement and care responsibility, including children of color, children with disabilities, and adolescents. These children are often considered as having special needs and have historically spent longer periods of time in foster care than other children. The following measures draw attention to improvements that may be needed to achieve permanence for these populations:

Measure 3.1: For all children who exited foster care, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.2: For children who exited foster care and were identified as having a diagnosed disability, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.3: For children who exited foster care and were age 12 or older at the time of their most recent entry into care, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.4: For all children who exited foster care, what percentage by racial/ethnic category left either to reunification, adoption, or legal guardianship?

Measure 3.5: Of all children exiting foster care to emancipation, what percentage was age 12 or younger at the time of entry into care?

Permanency planning efforts for children should begin as soon as a child enters foster care and should be expedited by the provision of services to families.

Child Welfare Outcome 4: Reduce time in foster care to reunification without increasing re-entry. When it is necessary to remove a child from the home, the focus of service delivery should be on safely reunifying the family as soon as possible, if appropriate. Yet, returning children to their families too quickly may increase, in some instances, the risk of harm and re-entries into foster care. Because of this concern, children should only be returned home when the agency is certain that the risk of harm to the child has been minimized. In effect, the agency's decision to return the child home should be viewed as returning the child to a safe, permanent arrangement. The two measures developed for this outcome assess how quickly children are returned to their families and the rate at which children re-enter foster care. The measures for this outcome follow:

Measure 4.1: Of all children who were reunified with their parents or caretakers at the time of discharge from foster care, what percentage was reunified in the following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Measure 4.2: Of all children who entered foster care during the reporting period, what percentage re-entered care within 12 months of a prior foster care episode?

Foster care is a temporary setting and not a place for children to grow up.

Child Welfare Outcome 5: Reduce time in foster care to adoption. Children who cannot be reunified with their families and who have a goal of adoption should be placed with a new family as quickly as possible. Because of the social service and legal procedures involved in adoption, it is unusual for an adoption to be finalized in less than 24 months from when the child enters foster care, even for very young children. Also, because many prospective adoptive parents prefer to adopt young children, older children are at an increased risk of remaining in the foster care system. Children who are 3 years of age or older when they enter foster care have a lower probability of being adopted than children who are younger than 3 when they enter foster care. Hence, special attention should be given to improving the time to adoption for children who are 3 years of age or older when they enter foster care. Lastly, the Department strongly urges child welfare agencies and court systems to work collaboratively to improve the adoption time frames for all children. The specific measures for this outcome follow:

Measure 5.1: Of all children who exited foster care to a finalized adoption, what percentage exited care in the

following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Measure 5.2: Of all children who exited foster care to a finalized adoption and who were age 3 or older at the time of entry into care, what percentage exited care in the following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Child Welfare Outcome 6: Increase placement stability. Children should experience stability in their foster care placements to minimize any further disruption in their lives. The Department believes that, ideally, children should experience only one foster care placement that lasts until the child leaves foster care and that the child welfare agency should provide adequate supports to the foster family and the child to prevent disruption of the placement. However, many jurisdictions use short-term, emergency foster care placements when a child is removed from his or her home because of a family crisis. Therefore, jurisdictions that use emergency foster care placements would always report an additional placement for children. Thus, this measure examines how many children experience two or fewer placements during the time that they are in foster care rather than one.

Measure 6.1: Of all children served who had been in foster care for the time periods listed below, what percentage had no more than two placement settings during that time period?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Children need stability in family settings while they are in foster care.

Child Welfare Outcome 7: Reduce placements of young children in group homes or institutions. This outcome reflects the requirement at 475(5)A of the Social Security Act to place children in the least restrictive environments, e.g., family foster homes. It is acknowledged that a group home placement setting may be appropriate when the child's needs dictate this type of placement. However, the Department believes that such placements should only be considered after other less restrictive and/or more family-like options have been seriously pursued. The Department believes, even more so, that children under 12 should not be placed in these settings because of the benefits of a stable and loving family, and that States should take steps to reduce the number of young children who are placed in group homes or institutions. The measure designed to assess this outcome is as follows:

Measure 7.1: For all children who entered foster care during the reporting period and were age 12 or younger at the time of their most recent placement, what percentage was placed in a group home or an institution?

Context Information

The consultation group suggested that it was important to develop information for understanding the context of each State's performance on the outcome measures. Discussion centered on the types of information that would be most useful in providing the reader with an overview of the State's child welfare system, while at the same time showing some variations among State programs. The importance of selecting context information that was available from existing Federal data sources, rather than burdening States with additional reporting requirements, was also emphasized. The context information used in this report includes demographics on each State's general population, the number of children reported to child protective services, the number of children in foster care, the number of children waiting to be adopted at the end of the fiscal year, and the number of children adopted during the fiscal year.

The CFS reviews will examine in greater detail the factors that influence State achievement on the outcome measures and the contextual information. The results of these reviews will be included in future annual reports.

The Department believes significant progress has been made in defining appropriate child welfare outcomes and measures and wishes to take this opportunity to thank the members of the consultation group for sharing their time

38 BEST COPY AVAILABLE

and expertise in the development of this first national set of outcome measures. The Department believes, however, that it will need to monitor the outcome measures over the next several years to ensure that they do, in fact, provide a framework for assessing State performance in achieving the national goals of safety and permanency. And, of course, the Department remains committed to developing child well-being measures to assess whether the child welfare system meets the health, educational, and other needs of children.

Child Welfare Outcome Measures

This appendix lists the seven child welfare outcomes presented in this report and their associated measures.

Child Welfare Outcome 1: Reduce recurrence of child abuse and/or neglect

Measure 1.1: Of all children who were victims of substantiated or indicated child abuse and/or neglect during the reporting period, what percentage had another substantiated or indicated report within a 12-month period?

Child Welfare Outcome 2: Reduce the incidence of child abuse and/or neglect in foster care

Measure 2.1: Of all children who were in foster care during the reporting period, what percentage was the subject of substantiated or indicated maltreatment by a foster parent or facility staff?

Child Welfare Outcome 3: Increase permanency for children in foster care

Measure 3.1: For all children who exited foster care, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.2: For children who exited foster care and were identified as having a diagnosed disability, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.3: For children who exited foster care and were age 12 or older at the time of their most recent entry into care, what percentage left either to reunification, adoption, or legal guardianship?

Measure 3.4: For all children who exited foster care, what percentage by racial/ethnic category left either to reunification, adoption, or legal guardianship?

Measure 3.5: Of all children exiting foster care to emancipation, what percentage was age 12 or younger at the time of entry into care?

Child Welfare Outcome 4: Reduce time in foster care to reunification without increasing re-entry

Measure 4.1: Of all children who were reunified with their parents or caretakers at the time of discharge from foster care, what percentage was reunified in the following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Measure 4.2: Of all children who entered foster care during the reporting period, what percentage re-entered care within 12 months of a prior foster care episode?

Child Welfare Outcome 5: Reduce time in foster care to adoption

Measure 5.1: Of all children who exited foster care to a finalized adoption, what percentage exited care in the following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Measure 5.2: Of all children who exited foster care to a finalized adoption and who were age 3 or older at the time of entry into care, what percentage exited care during the following time periods?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Child Welfare Outcome 6: Increase placement stability

Measure 6.1: Of all children served who had been in foster care for the time periods listed below, what percentage had no more than two placement settings during that time period?

(1) Less than 12 months from the time of latest removal from home

(2) At least 12 months, but less than 24 months

(3) At least 24 months, but less than 36 months

(4) At least 36 months, but less than 48 months

(5) 48 or more months

Child Welfare Outcome 7: Reduce placements of young children in group homes or institutions

Measure 7.1: For all children who entered foster care during the reporting period and were age 12 or younger at the time of their most recent placement, what percentage was placed in a group home or an institution?

ADMINISTRATION FOR CHILDREN'S SERVICES
150 WILLIAM STREET - 18th FLOOR
NEW YORK, N.Y. 10038

NICHOLAS SCOPPETTA
Commissioner

March 12, 1999

IMPLEMENTATION OF THE ADOPTION AND SAFE FAMILIES ACT

Part I – GUIDELINES FOR PERMANENCY REVIEWS

I. Introduction

The Adoption and Safe Families Act (ASFA) was signed into law by President Clinton on November 19, 1997. On February 11, 1999, Governor Pataki signed legislation enacted by the New York State legislature to implement ASFA in New York State. That legislation took effect immediately.

In addition, the New York State Office of Children and Family Services (OCFS) has issued several ASFA-related documents, including an informational letter dated November 17, 1998 (98 OCFS INF -3) and implementing regulations, copies of which can be downloaded from the OCFS Public Folder in CONNECTIONS. **Agency staff should regularly check the OCFS ASFA Policy/PracticeFolder in CONNECTIONS for updated ASFA implementation information from OCFS.**

To comply with the Adoption and Safe Families Act, with the New York implementing legislation, and with related state regulations, ACS and its contract agencies must take steps to review the permanency plans for all children in ACS' care.

These guidelines are intended to inform you of the broad outlines of the requirements of ASFA's permanency planning requirements. It is also designed to provide guidance to you in your planning activities, especially in your assessment of permanency planning goals for all children in foster care, in order to ensure that all children receive the permanency determinations mandated by federal and state law.

ASFA puts into place the most extensive changes in federal child welfare policy since the Adoption Assistance and Child Welfare Act of 1980 and reflects a growing national

concern that there are too many foster children who linger in care when a permanency outcome of return home is no longer appropriate . It amends sections of Title IV-E of the Social Security Act, the federal law that sets standards for the operation of state foster care programs, and requires states to pass legislation of their own to conform with the new federal standards.

ASFA requires child welfare agencies to pay heightened attention to children's health and safety and to their need for permanent families. ASFA is structured around five key concepts:

1. The child's health and safety "shall be the paramount concern" in determining what efforts should be made to reunify families;
2. In "aggravated circumstances" as defined in State law (e.g., in cases of severe or repeated abuse, including certain serious sexual abuse cases), reunification services to families are not required;
3. When no reunification services to families are required, the child needs a quick, alternative permanent placement;
4. In all other cases, services to families need to be improved and accelerated;
5. In all cases, permanency – whether the goal is return home, adoption, legal guardianship, or legal custody with a fit and willing relative -- needs to be expedited.

Under the Adoption and Safe Families Act, a permanency hearing must be held in Family Court 12 months after the child enters foster care and at 12-month intervals thereafter.[1] At that hearing, the Family Court judge must determine whether and when the child will either be returned to the birth parents, placed for adoption, referred for legal guardianship, placed with a fit and willing relative, or placed in another planned permanent living arrangement.

As explained in the November 17 OCFS Informational Letter, in order to ensure that children do not linger indefinitely in foster care, ASFA creates a presumption that a petition to terminate parental rights must be filed and concurrently steps to finalize an adoptive placement must be initiated in the following three circumstances:

- where a child has been in foster care for 15 of the last 22 months, OR
- where a court has determined a child to be an abandoned infant, OR
- where a parent has committed certain crimes against the child or a sibling (i.e. murder, manslaughter, attempted murder or manslaughter, or a felony assault resulting in serious bodily injury to the child or another child of the parent)

[1] For purposes of ASFA, the date that a child enters foster care is defined as either 60 days after the child is removed from the home, or the date that the child is found by a court to be an abused or neglected child, whichever is earlier.

Although ASFA creates the presumption that certain categories of foster children should be legally freed and adopted quickly, it also creates three grounds for exceptions to that presumption:

1. at the option of the State, the child is being cared for by a relative;

2. a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing a TPR petition would not be in the best interests of the child, or

3. the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home if reasonable efforts to reunify the family are required.

II. Timing of Permanency Reviews

All children need permanent, safe, stable, nurturing families. For many foster children, the need for permanence can be met by their birth families if they promptly receive the services they need to help them care for their children. For other children, the need for permanence will be met by placement through adoption, legal guardianship, or legal custody with a fit and willing relative.

In either case, children cannot wait indefinitely for permanence. Children need stable, long-term relationships with caring and committed adults, and they need those relationships sooner rather than later. Foster care is intended to be a short, temporary service, not a place where children grow up.

A. Reviews of the Permanency Planning Goal Required for Children in Care For More Than 12 of the Last 22 Months

For children who have already been in care for 12 months or more, the review of the child's permanency planning goal described in this memorandum must occur as part of the next regularly scheduled service plan review ("SPR"). At that time, the agency must decide whether the child can safely return home, whether a petition to terminate parental rights should be filed, or whether one of the compelling reasons established by New York State's implementing legislation applies. For a reminder of who must be invited to participate in the SPR, please see section II(B) below.

For children who already have a permanency planning goal of adoption, the agency must act promptly to file a petition to terminate parental rights. State regulations require that the TPR petition be "presented to the proper court as soon as possible but in no case more than 30 days following a determination that it is in the best interests of the child to terminate parental

rights, unless there are serious extenuating circumstances which in the opinion of the local commissioner justify a special extension." *See* 18 NYCRR 431.9(c)(3).

Please note that children with a goal of independent living or adult residential care are NOT exempt from ASFA's mandates regarding permanency. All children need permanent families. It should not be presumed that older children or seriously disabled children are incapable of being reunited with their birth families or finding permanent families through adoption. Thus, the permanency needs of children with these goals must be reviewed periodically, but no less frequently than at their service plan reviews or when a court permanency hearing is due.

Similarly, this permanency review process applies to all children in foster care, including children placed under FCA Article 7 (PINS) and FCA Article 3 (JD), regardless of the level of care. Children placed in residential treatment centers, residential treatment facilities or other group settings are entitled to ASFA's permanency safeguards. A group home setting does not exempt the agency from making concrete efforts to find a permanent family for the child and to provide services to the child to allow the child either to return home or to become adoption-ready.

Finally, it should be noted that the time frames set forth in this permanency review process apply equally to children who have been transferred from one agency to another. It is incumbent on the sending agency to forward all pertinent documentation to the receiving agency and to provide the receiving agency with a briefing and a written summary of their efforts to work with the birth parents for reunification, along with their recommendations on permanency for the child. It would be inconsistent with ASFA to re-start the permanency planning clock based on a child's date of transfer.

B. Permanency Reviews Required For Children In Care for Fewer Than 12 of the Last 22 Months

In order to assure early permanency for children who have been in foster care fewer than 12 months, the child's case planner must schedule a "permanency review" within 90 days of the anticipated date of the 12-month permanency hearing in Family Court. Since the permanency hearing will be scheduled to occur after the child has been in care for 14 months (i.e. 12 months plus 60 days), the permanency review must take place during the preceding 90 days.

Ideally, this permanency review will take place at the regular service plan review ("SPR"), if the SPR is scheduled to occur during the 11th, 12th or 13th month after the child actually entered foster care. However, if no SPR is scheduled to occur in the 11th, 12th or 13th month after the child comes into care, the case planner must hold a special case conference in the 12th month after the child has come into care to address the child's permanency needs and to prepare for the permanency hearing in Family Court.

Like the service plan review case conference, invitees to the special permanency case conference must include the birth parents, the foster parents, the child's case planner, the case manager (if the child is in the care of a contract agency), the child (if he or she is 10 years or older), an independent third party reviewer and any other persons who can help the case planner reach a decision on permanency which gives "paramount concern" to the child's health and safety.

ACS believes that an important prerequisite to successful service planning is the participation of parents in the service planning process. In accordance with New York's ASFA implementing legislation, birth parents must be informed of their right to attend the case conference and of their right to have counsel or other representative or companion with them.

However, agencies must do more than simply send a letter inviting the family to attend a case conference. Agencies must take affirmative steps to ensure that there is a consistent practice of families actually attending SPR's and permanency review case conferences. It is critical that agencies make meaningful efforts to assure that the birth parent(s) and children over 10 are not only aware of the permanency review but are actually able to participate, accompanied (if they wish) by a supportive person. Agencies should also attempt to consult with incarcerated parents in appropriate cases.

Agencies should also be mindful of their obligation under ASFA to invite foster parents, pre-adoptive parents and relatives caring for foster children to SPR's and permanency review case conferences.

If the parent is currently attending a substance abuse treatment program, a representative from the treatment program should be invited to attend the case conference. At a minimum, there should be a documented pattern of interaction between the case planner and the treatment program that attests to coordinated planning. In this regard, agencies must be mindful of applicable confidentiality regulations and should obtain appropriate releases from parents in order to permit the disclosure of otherwise confidential substance abuse treatment information.

A similar permanency review must take place at any subsequent six-month service plan review until the child is discharged from care. Ideally, this should occur not more than once after the first permanency review, since by the time of the subsequent permanency review, a decision should be made in most cases either to return the child home or to implement an alternative permanency plan for the child. The implementation of these guidelines by ACS and the contract agencies is designed to insure that the time frames set forth in ASFA for achieving permanency will be met.

III. Guidelines for Permanency Review Case Conferences

As part of the review of the child's permanency planning goal, the agency must decide whether and when the child should be reunited with his or her birth parents or whether it is appropriate to file a TPR petition at that time.

The permanency review case conferences will have one of several possible outcomes:

1) TPR filing necessary
2) TPR filing not necessary because the goal remains return to parent due to the determination that there is a strong likelihood that the child will be able to return home safely within the next six (6) months (as set forth in section VII(A)(2) below)
3) TPR filing not necessary because another "compelling" reason" has been documented (as set forth in sections VI and VII below)
4) A TPR cannot be filed because the agency has not provided or arranged services necessary for the child's safe return, where such services are legally required (as set forth in section VIII below).

IV. Legal Consultation

In preparing for the permanency review , caseworkers who are unsure whether or not there are legal grounds to terminate parental rights should request a legal consultation. Contract agency caseworkers should consult with their attorneys. ACS staff should consult with the attorney from the Division of Legal Services who is assigned to their case.

V. Timeframe for Filing TPR

If it is determined at the permanency review case conference that a TPR filing is necessary, the child's permanency planning goal must be changed to adoption, and, pursuant to New York State Regulations (18 NYCRR 431.9 (c)), the petition must be filed within 30 days unless there are serious extenuating circumstances which in the opinion of the local commissioner justify an exception. This process will work most expeditiously where ACS case managers receive adequate advance notice of the case conference and are able to participate.

For children with a pre-existing goal of adoption for whom a TPR has not yet been filed, the TPR petition must be filed promptly, in accordance with the requirements of 18 NYCRR 431.9(c).

VI. Kinship Care Cases

Under ASFA and NY's ASFA-implementing legislation, a TPR need not be filed when the child has been in care for 15 of the last 22 months if the child is in the care of a relative.

At the same time, both federal and state law require that, at 12-month intervals, a permanency hearing be held in court for all children in foster care. This is true for children placed in the homes of relatives as well as for children placed in non-relative homes or other settings.

The ASFA TPR exception for children in the care of relatives recognizes that there may be situations where children in foster care in their relatives' homes are in stable, safe settings, where the child perceives that this is permanent, even in circumstances where the relatives prefer not to adopt their kin. *See* OCFS Informational Letter (Nov. 17, 1998). This is consistent with OCFS' long-standing policy in relation to relative foster care, as outlined in 92 LCM-27.

However, ASFA's TPR exception for children in kinship care does not preclude an agency from filing a petition to terminate parental rights when such petition is in the best interests of the child. *See* 18 NYCRR 431.9(e)(2)(i).

This, too, is consistent with pre-existing state regulations. A child placed in the foster home of an approved relative may remain in foster care with a goal of independent living **ONLY** if "it is determined to be in the child's best interests that he or she remain in foster care and not return to his or her parents or be adopted until the child reaches the age of 18." 18 NYCRR 430.12(f). In other words, Discharge to Parent(s)/Caretaker or Discharge to Adoption must have been ruled out on the grounds that neither permanency goal is in the child's best interests. *See* CWA Bulletin No. 91-3, UR Requirements to Prepare Youths for Independent Living (June 7, 1991).

In short, the permanency needs of every child must be individually assessed to determine what permanency plan is in the child's best interest. Kinship foster care status is a factor to be considered in making an individualized assessment of the child's permanency needs. Although kinship care may be an exception to the mandate to file a TPR when the child has been in care for 15 out of 22 months, kinship care is **not** an automatic exception to the requirement to appropriately address the child's permanency needs. Rather, the guidelines set forth in section VII should be followed for all children.

VII. Compelling Reasons Not To File for TPR

New York's ASFA-implementing legislation includes a list of five illustrative "compelling reasons" :

1. The child has a permanency goal other than adoption;
2. The child is 14 years or older and will not consent to an adoption;
3. There are insufficient grounds for filing a TPR petition;

4. The child is the subject of a pending Article 10 disposition;
5. The child was placed into foster care pursuant to Article 3 (JD's) or Article 7 (PINS) of the Family Court Act.

In deciding whether or not a compelling reason not to file a TPR applies, each child should receive an ongoing, individualized assessment. The factors which might constitute compelling reasons not to pursue a TPR must be weighed along with other known child and family circumstances. Additionally, the determination that a compelling reason not to file a TPR exists must be re-assessed at the subsequent service plan review and should be re-assessed sooner if there is a significant change in circumstances.

If it is determined that a compelling reason exists why it is not in the best interests of the child to file a TPR petition, the specifics of the compelling reason must be clearly documented in the progress notes, which must be kept in the case record available for court review.

The determination that a compelling reason exists not to file a TPR must be approved in writing by a staff member at least two levels above the case planner.

A. The Child Has A Permanency Goal Other Than Adoption

In preparing for a permanency hearing as well as for the critical decision that must be made on behalf of children in care for 15 of the most recent 22 months, the child's case planner must decide what is the appropriate permanency goal for the child.

The following represents a list of scenarios that might suggest that adoption is not the appropriate goal for the child:

1. The child has been placed in a foster home with an approved relative and that relative will provide the best available care for the child. The relative strongly prefers that parental rights not be terminated but is committed to providing a non-adoptive but permanent and legally secure home for the child through legal guardianship or legal custody. Before this factor may be invoked, the relative and the birth parents must receive meaningful counseling about the potential benefits of adoption (along the lines suggested in 92 LCM-27), the option of a voluntary surrender (as described in 18 NYCRR 431.9(c)(1)) and, if appropriate, the availability of an adoption which allows for continued contact between the child and other members of his or her birth family.

2. The parent(s) have made substantial progress in eliminating the problems causing the child's continued placement in foster care and there is a strong likelihood that the child will be able to return home safely within the next six (6) months. For example, if a parent is attending a substance abuse treatment program, a compelling reason might be a favorable prognosis for completing treatment based on clear evidence of

substantial progress in the areas of abstinence and parenting. Unless justified by extenuating circumstances, this factor should not be invoked more than once.

3. A parent's death is imminent and the parent does not wish to surrender the child for adoption. The parent has designated, or is in the process of designating, an appropriate permanent caretaker for the child.

4. The parent is incarcerated but is scheduled to be released within the next 6 months and there is a strong likelihood that the child will be able to return home safely within a reasonable time period after the parent is released. Unless justified by extenuating circumstances, this factor should not be invoked more than once.

5. As the result of a current assessment, the agency has determined that a family setting will not meet the child's needs because of the child's severe emotional, behavioral or psychiatric problems. The agency must demonstrate that it has put in place services to address the problems that prevent the child from functioning in a family setting.

6. The child has a permanent disability which can be managed only with intensive assistance in a specialized setting (such as a residential group care setting, therapeutic foster board home, or medical foster boarding home) and

   (a) the child's birth parent or other family member continues to be meaningfully involved in planning for the child, or
   (b) the child's birth parent or other family members are no longer involved in planning for the child but no adoptive resource has yet been identified. In that case, the agency must make diligent efforts on all levels, including local, state and national adoption exchanges, to find a prospective adoptive family for the child.

7. The parent(s) has agreed either to surrender his or her parental rights or has agreed to consent to an appropriate legal guardianship arrangement for the child. In the event of an agreement to surrender, the birth parent's application for approval of a judicial surrender must be filed within 60 days of the permanency review case conference. If the plan is legal guardianship, judicial proceedings to effectuate the guardianship must be initiated within 60 days of the permanency review case conference. In either case, if the relevant documents are not filed in court within 60 days, or if the matters is dismissed or withdrawn, a referral for termination of parental rights must be made.

8. It is understood that every family's circumstances are unique and that not all situations can be anticipated. Therefore, we foresee that other serious, extenuating circumstances may exist that mandate the conclusion that it would be clearly

detrimental to the best interests of the child to file a petition to terminate parental rights. Such extenuating circumstances must be clearly documented in the case file.

B. The Child Is 14 Or Older And Will Not Consent To An Adoption

To help a foster child make an informed decision about adoption, the agency must make sure that the child has received meaningful counselling about the benefits of adoption and that the child is aware of the possibility (if appropriate) of an adoption which allows for continued contact with members of his or her birth family. This counselling must take place before this compelling reason is invoked.

C. Insufficient Grounds To File TPR Petition

If there is no legal basis for filing a TPR petition, the petition should not be filed. Plainly, agencies should not file frivolous TPR petitions which will be dismissed because they lack a legal basis.

Before reaching a conclusion as to whether or not there are sufficient grounds to file a TPR, agency staff should seek a legal consultation.

D. The Child Is Subject Of A Pending Article 10 Disposition

The fact that the disposition hearing on an abuse or neglect case has not been concluded may be a "compelling reason" not to file a TPR petition. However, this exception does not apply if the child was the subject of a prior abuse or neglect case and has not left foster care, or if the child is in placement as a result of a voluntary placement or other proceeding.

E. The Child Was Placed In Care As A PINS/JD

The fact that the child is in placement as a PINS or JD may constitute a compelling reason not to file a TPR petition. However, agencies must continue to engage in permanency planning for the child, and the child will also receive permanency hearings.

VIII. Necessary Services Not Provided

Both ASFA and the New York State implementing legislation include an exception to TPR requirement if the agency has failed to provide such services as it deems necessary for the safe return of the child to the parent(s).

Critical to successful permanency planning under ASFA is the early engagement of parents and the front-loading of services to families. In the absence of a determination by the court that reunification efforts are not required, agencies have an obligation to make and document their diligent efforts to address the conditions which led to the child's placement in care and to encourage and strengthen the parental relationship when such efforts will not be detrimental to the best interests of the child. Where diligent efforts are required, an agency's failure to make diligent efforts is a breach of its obligations under the Social Services Law and of its contract with ACS.

If it is determined that services which were identified in the case plan or ordered by the Family Court as necessary to permit the child to be safely returned home have not been provided, the specifics of what service or services were not provided must be documented in the progress notes.

The case plan developed at the service plan review conference must carefully document why the necessary services were not provided, (e.g. failure to refer, outside institutional resistance, unavailability of service, lack of treatment slots), and must include a plan to immediately put the necessary services in place. **The determination that necessary services were not provided, as well as the plan for immediately putting those services in place, must be approved by a staff member at least two (2) levels above the case planner.**

Please note that for this TPR exception to apply, two separate requirements must be met. First, the service must not have been delivered according to the schedule set forth in the child's case plan. Second, unless otherwise ordered by a court, the case planner must make a determination that these services are still necessary for the child's safe return.

IX. Tracking Permanency Requirements Compliance

As an aid to ASFA implementation, ACS, in conjunction with OCFS, will periodically issue to agencies child-specific lists identifying children in foster care for 12 or more of the most recent 22 months.

ACS plans to monitor ASFA compliance closely through a variety of mechanisms, including ACS attendance at service plan reviews and permanency reviews, case record readings, and data tracking on an agency-specific basis, with particular attention to parent and child participation in service planning, as well as permanency review outcomes.

X. Subsequent Reviews

After the initial permanency review has been completed, if a decision is made that there is a compelling reason not to file a TPR petition or take a voluntary surrender, the child's permanency needs must be carefully re-assessed at each subsequent service plan review and may be re-assessed sooner if circumstances warrant. Ideally, this should occur not more than

once after the first permanency review, since by the time of the subsequent permanency review, a decision should be made in most cases either to return the child home or to implement an alternative permanency plan for the child. Children must not be permitted to linger indefinitely in foster care without the benefit of a permanent, stable, safe, nurturing family.

XI. "Reasonable Efforts" To Achieve Permanency After TPR Is Filed

If a decision is made at any permanency review to file a TPR petition or to take a voluntary surrender, expeditious steps must be taken to complete the TPR or surrender process and to promptly finalize the child's adoption.

Once a decision has been made to discontinue reunification efforts, ASFA and New York's ASFA-implementing legislation require agencies to make "reasonable efforts" to complete all necessary steps to finalize the child's permanent placement. In completing such steps, casework staff should be mindful of their obligations under the federal Multi-Ethnic Placement Act ("MEPA"), related Inter-Ethnic Adoption Provisions and the implementing New York State Regulations (18 NYCRR 421.18). At the time the TPR is filed, ASFA requires agencies "concurrently to identify, recruit, process and approve a qualified family for adoption." The importance of this requirement is emphasized in the OCFS November 17, 1998 Informational Letter.

In the case of a child for whom the permanency plan is adoption, each subsequent service plan review must document what concrete steps the agency is taking to ensure that the child's adoption is promptly finalized. If the child is not going to be adopted by his or her foster parent, the case plan must document child-specific recruitment efforts, such as the use of local, state, regional and national adoption exchanges, including electronic exchange systems.

XII. Early Reunification

Nothing in these guidelines is intended to prevent a decision from being made to reunify a family at an earlier time period than is required by this process, if doing so is consistent with ASFA's "paramount concern" for a child's health and safety.

XIII. Early TPR's and Voluntary Surrenders of Parental Rights

Nothing in these guidelines is intended to prevent a decision from being made to file a TPR petition or to take a voluntary surrender of parental rights at an earlier time period than is required by this process, if it is the appropriate course of action in the child's best interests in a particular case.

XIV. Effective Date

These guidelines are effective immediately.

FAMILY COURT JUDGE SURVEY
CITIZENS' COMMITTEE FOR CHILDREN'S

TASK FORCE ON THE ADOPTION AND SAFE FAMILIES ACT (ASFA) AND THE FAMILY COURT

Questionnaire for Family Court Judges

105 East 22nd Street, New York, New York 10010
Phone (212) 673-1800

GENERAL INFORMATION

Thank you for taking time out of your busy schedule to meet with us. By way of introduction, Citizens' Committee for Children of New York is a 57 year old, independent child advocacy organization dedicated to ensuring that every New York City child is healthy, housed, educated and safe. Each year CCC conducts a series of research and field projects to study the implementation of new programs and evaluate the impact of new policies on children and families. One of our projects this year focuses on the Adoption and Safe Families Act and its impact on the Family Court. To conduct our research, CCC is interviewing Family Court Judges and Referees who sit in Child Protective and Juvenile Delinquency Parts. Specifically, we would like to learn more about how you are implementing the requirements under ASFA, any barriers you have encountered and your recommendations for improving the functioning of the Family Courts. We are grateful to have the opportunity to learn from your expertise and experience. As with all of our projects, please know that any and all information that we collect during this interview will be held strictly **CONFIDENTIAL** and that no person or court will be named in any of our findings.

Name of Judge: _____

County: _____

Phone Number: _____

Fax Number: _____

CCC Volunteers Conducting the Interview: _____

Date: _____

I. Caseload

1. Over the past month, what is the average number of petitions (children) on your docket daily?

1a. Over the past year, has the number of petitions on your docket

- ❑ Increased
- ❑ Decreased
- ❑ Stayed the same (go to question 2)
- ❑ Other (please explain) _____

1b. What do you think might be some of the reasons for any change in the volume of petitions on your docket?

II. Use of Referees

2. Do you use Referees?

- ❑ Yes
- ❑ No What are the main reasons why you do not use Referees? **(skip questions 3-5 and go to Section III)**

3. What type of cases do you assign to a Referee?

4. In general, what percentage of cases do you assign to a Referee?

5. In your opinion, what are the benefits of using Referees?

III. Resources

6. How often do you use the Family Court Mental Health Services to conduct assessments of parents?

- ❑ In every case
- ❑ In some cases
- ❑ In few cases
- ❑ Never. What are some of the reasons why you do not use these services to conduct assessments of parents?

7. How often do you use the Family Court Mental Health Services to conduct assessments of children?

- ❑ In every case
- ❑ In some cases
- ❑ In few cases
- ❑ Never._ What are some of the reasons why you do not use these services to conduct assessments of children?

8. Are these services generally available to you on a timely basis?

- ❑ Yes
- ❑ No

8a. If no, what is the average waiting period for a mental health assessment?

9. In general, do these mental health assessments include (please check all that apply)
   - ❑ Chief complaints
   - ❑ Family demographics
   - ❑ History of present mental illness
   - ❑ Past history of medical and psychiatric illness
   - ❑ Developmental and personal history
   - ❑ Family history (including mental illness, drug and alcohol abuse)
   - ❑ Mental status
   - ❑ Diagnosis
   - ❑ Treatment recommendations _____
   - ❑ Other (please describe): _____

9a. In general, what additional information, if any, would you like to see reported in these mental health assessments that are presented to the court?

Do the Family Court Mental Health Services typically address the needs of the court?
- ❑ Yes
- ❑ No

10a. If no, what are some of the reasons why these services do not address the needs of the court?

11. Are there any additional services that you would like to have available that are not currently provided to the Family Court? (please list)
   - ❑ Drug Screening
   - ❑ Social Workers
   - ❑ Translator Services
   - ❑ Case Coordinators
   - ❑ Other _____

IV. Parties' Understanding of ASFA

12. In your experience, are parents generally well-informed about the requirements under ASFA, including requirements to make "reasonable efforts," complete permanency hearings by 14 months after a child has been placed in foster care, and file termination of parental rights petitions according to certain criteria?
   - ❑ Most parents are generally well-informed
   - ❑ Some parents are generally well-informed
   - ❑ Few parents are generally well-informed

12a. In what areas, if any, do parents lack information?

13a. ACS attorneys should be similarly well-informed about the requirements under ASFA. In your experience, are they generally well-informed in each area?
   - ❑ Most ACS attorneys are generally well-informed
   - ❑ Some ACS attorneys are generally well-informed
   - ❑ Few ACS attorneys are generally well-informed

13a. In what areas, if any, do ACS attorneys lack information?

14. ACS caseworkers should be similarly well-informed about the requirements under ASFA. In your experience, are they generally well-informed in each area?
    - ❑ Most ACS caseworkers are generally well-informed
    - ❑ Some ACS caseworkers are generally well-informed
    - ❑ Few ACS caseworkers are generally well-informed

14a. In what areas, if any, do ACS caseworkers lack information?

15. Contract agency caseworkers should be similarly well-informed about the requirements under ASFA. In your experience, are they generally well-informed in each area?
    - ❑ Most contract agency caseworkers are generally well-informed
    - ❑ Some contract agency caseworkers are generally well-informed
    - ❑ Few contract agency caseworkers are generally well-informed

15a. In what areas, if any, do contract agency caseworkers lack information?

16. Law guardians should be similarly well-informed about the requirements under ASFA. In your experience, are they generally well-informed in each area?
    - ❑ Most law guardians are generally well-informed
    - ❑ Some law guardians are generally well-informed
    - ❑ Few law guardians are generally well-informed

16a. In what areas, if any, do law guardians lack information?

17. 18-B panel attorneys and other parent representatives should be similarly well-informed about the requirements under ASFA. In your experience, are they generally well informed in each area?
    - ❑ Most 18-B attorneys and other parent representative are generally well-informed
    - ❑ Some 18-B attorneys and other parent representatives are generally well-informed
    - ❑ Few 18-B attorneys and other parent representatives are generally well-informed

17a. In what areas, if any, do 18-B panel attorneys or other parent representatives lack information?

V. Process

18. On average, how soon after a child has been placed in foster care do you begin the fact-finding hearing in an original child protective case?
    - ❑ Less than two months
    - ❑ Two months
    - ❑ Between 2-6 months
    - ❑ More than 6 months
    - ❑ Other_____

18a. Over the past year, has the time it takes between placing a child in foster care and the beginning of the fact-finding hearing
- ❑ Increased
- ❑ Decreased
- ❑ Stayed the Same (go to question 18c)
- ❑ Other (please explain) _____

18b. What do you think might be some of the reasons for any change?

18c. Would you make recommendations to shorten the time period between placement in foster care and the beginning of the fact-finding hearing? (please list any recommendations)

19. Over the past year, has the time it takes to complete the fact-finding hearing in an original child protective case
- ❑ Increased
- ❑ Decreased
- ❑ Stayed the Same (go to question 19b)
- ❑ Other (please explain) _____

19a. What do you think might be some of the reasons for any change?

19b. Would you make any recommendations to shorten the time it takes to complete the fact-finding hearing in an original child protective case? (please list any recommendations)

20. Over the past year, has the time it takes to complete the dispositional hearing in an original child protective case
- ❑ Increased
- ❑ Decreased
- ❑ Stayed the Same (go to question 20b)
- ❑ Other (please explain) _____

20a. What do you think might be some of the reasons for any change?

20b. Would you make recommendations to shorten the time it takes to complete the dispositional hearing in an original child protective case? (please list any recommendations)

VI. Permanency

21. In general, how soon after a child has been placed in foster care is the initial permanency hearing completed?
- ❑ Three months
- ❑ Six months
- ❑ 6-9 months
- ❑ 9-12 months
- ❑ Other _____

21. In general, are there any barriers to completing the initial permanency hearing within 14 months of a child being placed in foster care?
- ❑ Yes
- ❑ No (go to question 23)

22a. Please describe any barriers:

23. Would you make any recommendations to decrease the time it takes to complete the initial permanency hearing?
- ❑ Yes
- ❑ No (go to question 24)

23a. If yes, what are they?

24. In general, are you able to track and monitor families' progress from time of removal through the initial permanency hearing in an original child protective case?
- ❑ Yes
- ❑ No

24a. In general, are you able to track and monitor families' progress from the initial permanency hearing through all subsequent permanency hearings?
- ❑ Yes
- ❑ No

24b. Are there any resources that you need to help you track and monitor families' progress? (please list)

25. Excluding those parties that are required to appear at each permanency hearing, who else regularly attends each permanency hearing?
- ❑ Parent or guardian
- ❑ Child(ren)
- ❑ Lawyer for voluntary foster care agency
- ❑ ACS caseworker
- ❑ Voluntary agency caseworker
- ❑ Other_____

26. In general, how often is a copy of the ACS Uniform Case Record (UCR) put into evidence at permanency hearings?
- ❑ At every hearing
- ❑ At some hearings
- ❑ At few hearings
- ❑ Never

27. Of the Uniform Case Records (UCR's) that you review, are they generally complete and thorough?
- ❑ Yes
- ❑ No

27a. What information, if any, is generally missing from the Uniform Case Records that you review?

28. In general, what other written materials are put into evidence at permanency hearings?

29. In general, how often do parents/guardians testify at permanency hearings?
- ❑ At every hearing
- ❑ At some hearings
- ❑ At few hearings
- ❑ Never

30. In general, how often do children testify at permanency hearings?
- ❑ At every hearing
- ❑ At some hearings
- ❑ At few hearings
- ❑ Never

31. In general, which witnesses testify at permanency hearings?
- ❑ Contract agency caseworker
  Is the caseworker's testimony generally complete and thorough?
  - ❑ Yes
  - ❑ No
- ❑ ACS caseworker
  Is the caseworker's testimony generally complete and thorough?
  - ❑ Yes
  - ❑ No
  - ❑ Other _____
    Is this "other" person's testimony generally complete and thorough?
    - ❑ Yes
    - ❑ No

31a. What information, if any, is generally missing from these witnesses' testimony?

32. Is there any other information that would help the court approve the permanency goal for a child?

VII. Adjournments

33. We understand that original child protective cases and permanency hearings are sometimes adjourned. When this happens, what are the most common reasons for adjournments?
    - ❑ Parties do not appear
    - ❑ Attorneys do not appear
    - ❑ Caseworkers do not appear
    - ❑ Incomplete information is presented by attorneys
    - ❑ Incomplete information is presented by caseworkers
    - ❑ Unable to complete docket on a given day due to time constraints
    - ❑ Other (please explain) _____

34. Over the past year, has the number of adjournments in original child protective cases and permanency hearings
    - ❑ Increased
    - ❑ Decreased
    - ❑ Stayed the same (go to question 35)
    - ❑ Other (please explain) _____

34a. What do you think might be some of the reasons for any change?

35. What recommendations would you make for decreasing the number of adjournments of original child protective cases and permanency hearings?

VIII. Termination of Parental Rights Hearings

36. Over the past year, has the number of petitions filed to terminate a parent's rights
    - ❑ Increased
    - ❑ Decreased
    - ❑ Stayed the same (go to question 37)
    - ❑ Other (please explain) _____

36a. What do you think might be some of the reasons for any change?

IX. Wrap Up

37. Do you have any other thoughts about the effect of ASFA on the Family Court?

Thank you for speaking with us.

FAMILY COURT REFEREE SURVEY
CITIZENS' COMMITTEE FOR CHILDREN'S

TASK FORCE ON THE ADOPTION AND SAFE FAMILIES ACT (ASFA) AND THE FAMILY COURT

Questionnaire for Referees

105 East 22nd Street, New York, New York 10010 Phone (212) 673-1800

GENERAL INFORMATION

Thank you for taking time out of your busy schedule to meet with us. By way of introduction, Citizens' Committee for Children of New York is a 57 year old, independent child advocacy organization dedicated to ensuring that every New York City child is healthy, housed, educated and safe. Each year CCC conducts a series of research and field projects to study the implementation of new programs and evaluate the impact of new policies on children and families. One of our projects this year focuses on the Adoption and Safe Families Act and its impact on the Family Court. To conduct our research, CCC is interviewing Family Court Judges and Referees who sit in Child Protective and Juvenile Delinquency Parts. Specifically, we would like to learn more about how you are implementing the requirements under ASFA, any barriers you have encountered and your recommendations for improving the functioning of the Family Courts. We are grateful to have the opportunity to learn from your expertise and experience. As with all of our projects, please know that any and all information that we collect during this interview will be held strictly **CONFIDENTIAL** and that no person or court will be named in any of our findings.

Name of Referee: _____

County: _____

Phone Number: _____ Fax Number: _____

CCC Volunteers Conducting the Interview: _____

Date: _____

I. Caseload

11. What types of hearings do you hear?

12. Over the past month, what is the average number of petitions (children) on your docket daily?

12a. Over the past year, has the number of petitions on your docket
- ❑ Increased
- ❑ Decreased
- ❑ Stayed the same (go to question 3)
- ❑ Other (please explain) _____

12b. What do you think might be some of the reasons for any change in the volume of petitions on your docket?

13. In your opinion, what are the benefits of using Referees?

II. Resources

14. How often do you use the Family Court Mental Health Services to conduct assessments of parents?
- ❑ In every case
- ❑ In some cases
- ❑ In few cases
- ❑ Never. What are some of the reasons why you do not use these services to conduct assessments of parents?

15. How often do you use the Family Court Mental Health Services to conduct assessments of children?
- ❑ In every case
- ❑ In some cases
- ❑ In few cases
- ❑ Never. What are some of the reasons why you do not use these services to conduct assessments of children?

16. Are these services generally available to you on a timely basis?
- ❑ Yes
- ❑ No

16a. If no, what is the average waiting period for a mental health assessment?

17. In general, do these mental health assessments include (please check all that apply)
- ❑ Chief complaints
- ❑ Family demographics
- ❑ History of present mental illness
- ❑ Past history of medical and psychiatric illness
- ❑ Developmental and personal history
- ❑ Family history (including mental illness, drug and alcohol abuse)
- ❑ Mental status
- ❑ Diagnosis
- ❑ Treatment recommendations
- ❑ Other (please describe): _____

17a. In general, what additional information, if any, would you like to see reported in these mental health assessments that are presented to the court?

18. Do the Family Court Mental Health Services typically address the needs of the court?
- ❑ Yes
- ❑ No

18a. If no, what are some of the reasons why these services do not address the needs of the court?

19. Are there any additional services that you would like to have available that are not currently provided to the Family Court? (please list)
- ❑ Drug Screening
- ❑ Social Workers
- ❑ Translator Services
- ❑ Case Coordinators
- ❑ Other: _____

III. Parties' Understanding of ASFA

20. In your experience, are parents generally well-informed about the requirements under ASFA, including requirements to make "reasonable efforts," complete permanency hearings by 14 months after a child has been placed in foster care, and file termination of parental rights petitions according to certain criteria?
- ❑ Most parents are generally well-informed
- ❑ Some parents are generally well-informed
- ❑ Few parents are generally well-informed

20a. In what areas, if any, do parents lack information?

21. ACS attorneys should be similarly well-informed about the requirements under ASFA. In your experience, are they generally well-informed in each area?
- ❑ Most ACS attorneys are generally well-informed
- ❑ Some ACS attorneys are generally well-informed
- ❑ Few ACS attorneys are generally well-informed

21a. In what areas, if any, do ACS attorneys lack information?

- ❑ ACS caseworkers should be similarly well-informed about the requirements under ASFA. In your experience, are they generally well-informed in each area?
- ❑ Most ACS caseworkers are generally well-informed
- ❑ Some ACS caseworkers are generally well-informed
- ❑ Few ACS caseworkers are generally well-informed

22a. In what areas, if any, do ACS caseworkers lack information?

23. Contract agency caseworkers should be similarly well-informed about the requirements under ASFA. In your experience, are they generally well-informed in each area?

- ❑ Most contract agency caseworkers are generally well-informed
- ❑ Some contract agency caseworkers are generally well-informed
- ❑ Few contract agency caseworkers are generally well-informed

23a. In what areas, if any, do contract agency caseworkers lack information?

24. Law guardians should be similarly well-informed about the requirements under ASFA. In your experience, are they generally well-informed in each area?

- ❑ Most law guardians are generally well-informed
- ❑ Some law guardians are generally well-informed
- ❑ Few law guardians are generally well-informed

24a. In what areas, if any, do law guardians lack information?

25. 18-B panel attorneys and other parent representatives should be similarly well-informed about the requirements under ASFA. In your experience, are they generally well-informed in each area?

- ❑ Most 18-B attorneys and other parent representative are generally well-informed
- ❑ Some 18-B attorneys and other parent representatives are generally well-informed
- ❑ Few 18-B attorneys and other parent representatives are generally well-informed

25a. In what areas, if any, do 18-B panel attorneys or other parent representatives lack information?

IV. Permanency

26. In general, how soon after a child has been placed in foster care is the initial permanency hearing completed?

- ❑ Three months
- ❑ Six months
- ❑ 6-9 months
- ❑ 9-12 months
- ❑ Other_____

27. In general, are there any barriers to completing the initial permanency hearing within 14 months of a child being placed in foster care?
    - ❑ Yes
    - ❑ No (go to question 18)

27a. Please describe any barriers:

28. Would you make any recommendations to decrease the time it takes to complete the initial permanency hearing?
    - ❑ Yes
    - ❑ No (go to question 19)

28a. If yes, what are they?

29. In general, are you able to track and monitor families' progress from the initial permanency hearing through all subsequent permanency hearings?
    - ❑ Yes
    - ❑ No

29a. Are there any resources that you need to help you track and monitor families' progress? (please list)

30. Excluding those parties that are required to appear at each permanency hearing, who else regularly attends each permanency hearing?
    - ❑ Parent or guardian
    - ❑ Child(ren)
    - ❑ Lawyer for voluntary foster care agency
    - ❑ ACS caseworker
    - ❑ Voluntary agency caseworker
    - ❑ Other_____

31. In general, how often is a copy of the ACS Uniform Case Record (UCR) put into evidence at permanency hearings?
    - ❑ At every hearing
    - ❑ At some hearings
    - ❑ At few hearings
    - ❑ Never

32. Of the Uniform Case Records (UCR's) that you review, are they generally complete and thorough?
    - ❑ Yes
    - ❑ No

32a. What information, if any, is generally missing from the Uniform Case Records that you review?

33. In general, what other written materials are put into evidence at permanency hearings?

34. How often do parents/guardians testify at permanency hearings?
- ❑ At every hearing
- ❑ At some hearings
- ❑ At few hearings
- ❑ Never

35. How often do children testify at permanency hearings?
- ❑ At every hearing
- ❑ At some hearings
- ❑ At few hearings
- ❑ Never

36. In general, which witnesses testify at permanency hearings?
- ❑ Contract agency caseworker
  Is the caseworker's testimony generally complete and thorough?
  - ❑ Yes
  - ❑ No
- ❑ ACS caseworker
  Is the caseworker's testimony generally complete and thorough?
  - ❑ Yes
  - ❑ No
  - ❑ Other _____
    Is this "other" person's testimony generally complete and thorough?
    - ❑ Yes
    - ❑ No

36a. What information, if any, is generally missing from these witnesses' testimony?

37. Is there any other information that would help the court approve the permanency goal for a child?

V. Adjournments

38. We understand that permanency hearings are sometimes adjourned. When this happens, what are the most common reasons for adjournments?
- ❑ Parties do not appear
- ❑ Attorneys do not appear
- ❑ Caseworkers do not appear
- ❑ Incomplete information is presented by attorneys
- ❑ Incomplete information is presented by caseworkers
- ❑ Unable to complete docket on a given day due to time constraints
- ❑ Other (please explain) _____

39. Over the past year, has the number of adjournments in permanency hearings
    - ❑ Increased
    - ❑ Decreased
    - ❑ Stayed the same (go to question 30)
    - ❑ Other (please explain) _____

39a. What do you think might be some of the reasons for any change?

40. What recommendations would you make for decreasing the number of adjournments of permanency hearings?

VI. Wrap Up

Do you have any other thoughts about the effect of ASFA on the Family Court?

Thank you for speaking with us.

CITIZENS' COMMITTEE FOR CHILDREN OF NEW YORK IS AN INDEPENDENT NON-PROFIT ORGANIZATION THAT SEEKS TO ENSURE THAT EVERY CHILD IS HEALTHY, HOUSED, EDUCATED AND SAFE.

CHAIRMAN
Nancy F. Solomon

PRESIDENT
Nancy Locker

VICE PRESIDENTS
Sally Mendel
Martha J. Olson, Esq.
Samuel P. Peabody
John Sanchez
Heidi Stamas

TREASURER
Daniel Kronenfeld

SECRETARY
Ernesto Loperena

EXECUTIVE DIRECTOR
Gail B. Nayowith

BOARD OF DIRECTORS
Orren J. Alperstein
Thelma B. Baxter, Ed. D.
Alma J. Carten, D.S.W.
Helen S. Cooper
Judy Tobias Davis
Thelma Dye, Ph.D.
Gloria Faretra, M.D.
Mrs. Arthur A. Feder
Carol J. Feinberg
Trudy Festinger, D.S.W.
Diane A. Fogg
Judith A. Garson, Esq.
Nancy Hoving
Bonnie L. Howard
Chris Stern Hyman, Esq.
Sr. Mary Paul Janchill, D.S.W.
Janet M. Johnson, Esq.
Anne K. Jones
Katherine Kahan
Michael G. Kalogerakis, M.D.
Sheila Kamerman, D.S.W.
Hamilton F. Kean, Esq.
James Krauskopf
Frances Levenson, Esq.
Lee A. Link
Elinor G. Mannucci, Ph.D.
Maryann Marston
Arlette Ferguson Mathis
Sue Nager
Hermine Nessen
Laverne Parker-Robinson
Emily U. Satloff
Jean Schrag
Elizabeth Sheehan
Joanne M. Stern
Thomas A. Tierney
Darren Walker
Pat Wildman
Ruth A. Wooden

HONORARY DIRECTORS
Mrs. Howland Davis
Edythe W. First
Pam S. Levin
Charlotte Pratt
Marge Scheuer
Mrs. Robert S. Siffert
Mrs. Jesse D. Wolff

ASFA AND THE FAMILY COURT TASK FORCE

CO CHAIRS:
Judith A Garson
Chris Stern Hyman

MEMBERS:
Patricia Angus
Bonnie Bach
Bert Bergenfield
Helen Cooper
Randye Farmer
Anita Gundanna
Helen Hintz
Ruth Houghton
Katherine Kahan
Audrey Kislik
Connie Kolber
Ruth Lazarus
Charlotte Mayerson
Hermine Nessen
Gloria Plesent
Renata Singer
Leine Spohn-Gellert

CITIZENS' COMMITTEE FOR CHILDREN OF NEW YORK, INC.
105 East 22nd Street, 7th Floor
New York, NY 10010
V: (212) 673-1800 F: (212) 979-5063
E-mail: info@kfny.org
website: www.kfny.org

ABOUT CCC

Citizens' Committee for Children of New York (CCC) is an independent voice for New York City's children. CCC champions children who cannot vote, lobby, or act on their own behalf, especially those who are poor, have special needs or are particularly vulnerable. Our goal is to secure the rights, protections and services children deserve. Many of our activities directly affect the lives of individual children but most of our efforts are spent identifying the causes and effects of disadvantage and poverty, promoting the development of services in the community and working to make public and private institutions more responsive to children. CCC is unique among child advocacy organizations in that citizen members and staff work side-by-side assuming the roles of spokesperson, researcher, coordinator and watchdog for the City's children. Our staff and members include specialists in health, mental health, education, child care, housing, homelessness, income security, child welfare, juvenile justice and child and youth development.

CCC educates New Yorkers about children's issues, publishes reports and papers, collects and disseminates data, provides technical assistance and support to policymakers, service providers, parent and civic groups and monitors the implementation of federal, state and local policies. CCC directs its attention to budgets, legislation, regulations and management of children's programs. CCC provides a community presence by monitoring the availability and quality of services to children and families in New York City neighborhoods. CCC creates and joins coalitions, brokers competing interests and develops action plans to improve conditions for children. CCC helps New Yorkers turn their personal concern for children into action through our Community Leadership Course.

Kids First, New York is a citywide effort to mobilize parents, professionals, policymakers and other citizens to improve conditions for all New York City children. The Kids First, New York campaign adds another dimension to CCC's work to ensure that every child is healthy, housed, educated and safe.

CCC is a non-profit organization supported by individuals, foundations and corporations since 1944.

U.S. Department of Education
Office of Educational Research and Improvement (OERI)
National Library of Education (NLE)
Educational Resources Information Center (ERIC)

REPRODUCTION RELEASE

(Specific Document)

I. DOCUMENT IDENTIFICATION:

Title: The Adoption and Safe Families Act (ASFA) and the Family Court

Author(s): Jennifer A. March-Toly

Corporate Source: CCC NY

Publication Date: April 2002

II. REPRODUCTION RELEASE:

In order to disseminate as widely as possible timely and significant materials of interest to the educational community, documents announced in the monthly abstract journal of the ERIC system, *Resources in Education* (RIE), are usually made available to users in microfiche, reproduced paper copy, and electronic media, and sold through the ERIC Document Reproduction Service (EDRS). Credit is given to the source of each document, and, if reproduction release is granted, one of the following notices is affixed to the document.

If permission is granted to reproduce and disseminate the identified document, please CHECK ONE of the following three options and sign at the bottom of the page.

The sample sticker shown below will be affixed to all Level 1 documents

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

Level 1

☐

Check here for Level 1 release, permitting reproduction and dissemination in microfiche or other ERIC archival media (e.g., electronic) and paper copy.

The sample sticker shown below will be affixed to all Level 2A documents

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE, AND IN ELECTRONIC MEDIA FOR ERIC COLLECTION SUBSCRIBERS ONLY, HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

2A

Level 2A

☑

Check here for Level 2A release, permitting reproduction and dissemination in microfiche and in electronic media for ERIC archival collection subscribers only

The sample sticker shown below will be affixed to all Level 2B documents

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

Sample

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

2B

Level 2B

☐

Check here for Level 2B release, permitting reproduction and dissemination in microfiche only

Documents will be processed as indicated provided reproduction quality permits.
If permission to reproduce is granted, but no box is checked, documents will be processed at Level 1.

I hereby grant to the Educational Resources Information Center (ERIC) nonexclusive permission to reproduce and disseminate this document as indicated above. Reproduction from the ERIC microfiche or electronic media by persons other than ERIC employees and its system contractors requires permission from the copyright holder. Exception is made for non-profit reproduction by libraries and other service agencies to satisfy information needs of educators in response to discrete inquiries.

#13

Sign here, → please

Signature:	Printed Name/Position/Title: Rose Anello Assoc. Exec. Dir. for Public Affairs
Organization/Address: CCC NY 105 E 22nd St NY NY 10010	Telephone: 212 473 1800 FAX: 212 979 1063
	E-Mail Address: RAnello@KFNY.org Date: 7-30-02

(over)

III. DOCUMENT AVAILABILITY INFORMATION (FROM NON-ERIC SOURCE):

If permission to reproduce is not granted to ERIC, *or*, if you wish ERIC to cite the availability of the document from another source, please provide the following information regarding the availability of the document. (ERIC will not announce a document unless it is publicly available, and a dependable source can be specified. Contributors should also be aware that ERIC selection criteria are significantly more stringent for documents that cannot be made available through EDRS.)

Publisher/Distributor:
Address:
Price:

IV. REFERRAL OF ERIC TO COPYRIGHT/REPRODUCTION RIGHTS HOLDER:

If the right to grant this reproduction release is held by someone other than the addressee, please provide the appropriate name and address:

Name:
Address:

V. WHERE TO SEND THIS FORM:

Send this form to the following ERIC Clearinghouse:

ERIC Clearinghouse on Urban Education
Box 40, Teachers College
Columbia University
525 West 120th Street
New York, NY 10027

T: 212-678-3433 /800-601-4868
F: 212-678-4012

http://eric-web.tc.columbia.edu

However, if solicited by the ERIC Facility, or if making an unsolicited contribution to ERIC, return this form (and the document being contributed) to:

ERIC Processing and Reference Facility
4483-A Forbes Boulevard
Lanham, Maryland 20706

Telephone: 301-552-4200
Toll Free: 800-799-3742
FAX: 301-552-4700
e-mail: ericfac@inet.ed.gov
WWW: http://ericfac.piccard.csc.com

EFF-088 (Rev. 2/2000)